Session 2007/2008 Third Report

COMMITTEE ON STANDARDS AND PRIVILEGES

Report on a Complaint by Mr John Dallat MLA Against Mr Ian Paisley Junior MLA

TOGETHER WITH THE MINUTES OF PROCEEDINGS OF THE COMMITTEE RELATING TO THE REPORT

Ordered by The Committee on Standards and Privileges to be printed 11 June 2008 Report: 37/07/08R (Committee on Standards and Privileges)

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Committee Powers and Membership

- 1. The Committee on Standards and Privileges is a Standing Committee of the Northern Ireland Assembly established in accordance with paragraph 10 of Strand One of the Belfast Agreement and under Assembly Standing Order Nos. 48 and 52.
- 2. The Committee has power:
 - to consider specific matters relating to privilege referred to it by the Assembly;
 - to oversee the work of the Assembly Clerk of Standards;
 - to examine the arrangement for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the Assembly, and to review from time to time the form and content of those registers;
 - to consider any specific complaints made in relation to the registering or declaring of interests referred to it:
 - to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches of any code of conduct to which the Assembly has agreed and which have been drawn to the Committee's attention;
 - to recommend any modifications to any Assembly code of conduct as may from time to time appear to be necessary.
- 3. The Committee is appointed at the start of every Assembly, and has power to send for persons, papers and records that are relevant to its enquiries.
- 4. The membership of the Committee is as follows:

Mrs Carmel Hanna, Chairperson

Mr Willie Clarke, Deputy Chairperson¹

Mr Allan Bresland

Mr Francie Brolly

Rev Dr Robert Coulter

Mr Alex Easton

Mr David Hilditch

Mr Paul Maskey^{2 3}

Mr Alastair Ross⁴

Mr George Savage

Mr Brian Wilson

- 5. The Report and evidence of the Committee are published by the Stationery Office by order of the Committee. All publications of the Committee are posted on the Assembly's website: (www.niassembly.gov.uk.)
- 6. All correspondence should be addressed to the Clerk to the Committee on Standards and Privileges, Committee Office, Northern Ireland Assembly, Room 284, Parliament Buildings, Stormont, Belfast BT4 3XX. Tel: 02890 520333; Fax: 02890 525917; e-mail: committee.standards&privileges@niassembly.gov.uk

¹ Mr Willie Clarke replaced Mr Gerry McHugh as Deputy Chairperson with effect from 21 January 2008.

² Mrs Claire McGill replaced Mr Gerry McHugh with effect from 28 January 2008.

³ Mr Paul Maskey replaced Mrs Claire McGill with effect from 20 May 2008.

⁴ Mr Alastair Ross replaced Mr Adrian McQuillan with effect from 29 May 2007.

Report on a Complaint by Mr John Dallat MLA Against Mr Ian Paisley Junior MLA					

Table of Contents

Report		1
Appendix 1:	Report by the Interim Assembly Commissioner for Standards	5
Appendix 2:	Letter of Complaint by Mr John Dallat	25
Appendix 3:	Proceedings of the Committee Relating to the Report	29

Report on a Complaint by Mr John Dallat MLA Against Mr Ian Paisley Junior MLA					

Third Report

The Committee on Standards and Privileges has agreed to the following Report:

Complaint Against Mr Ian Paisley Junior MLA

- 1. The Committee on Standards and Privileges has considered a report by the Interim Assembly Commissioner for Standards on a complaint by Mr John Dallat MLA against Mr Ian Paisley Jnr MLA. The Report of the Interim Assembly Commissioner for Standards is appended to this report.
- 2. The complaint, and subsequent investigation, focussed on whether Mr Paisley Jnr had received the benefit of a home which was being provided by a constituent but which was not listed in the Assembly's Register of Members' Interests.
- 3. The Interim Commissioner conducted a long and detailed investigation into this matter to determine whether any benefit had been received and, if so, whether there had been a breach of the Assembly's Code of Conduct as a result of its non-registration in the Assembly's Register of Members' Interests.
- 4. The Interim Commissioner's report identifies a number of flaws in the standard administration processes associated with the purchase and transfer of ownership of a property.
- 5. The Committee recognises that one of these flaws in particular the omission of registration with the Land Registry to establish Mr Paisley's legal title may have contributed to the perception that a benefit had been received.
- 6. Indeed, the report refers to the Registrar's observation that 3 years to complete and lodge the necessary documents with the Land Registry 'is unusual'.
- 7. However, notwithstanding the fact that this omission meant that Mr Paisley did not have legal title to the property, he and his wife had assumed the responsibility of repaying the loan to the bank.
- 8. The Committee agrees with the Interim Commissioner's assertion that it was reasonable for Mr Paisley to believe he had completed the purchase of the house.
- 9. Therefore, after consideration of the report the Committee accepts that the substance of the complaint that a benefit had been received but not registered in the Assembly's Register of Members' Interests cannot be substantiated. The complaint therefore is not upheld.

Report on a Complaint by Mr John Dallat MLA Against Mr Ian Paisley Junior MLA					

Appendix 1

Report by the Interim Assembly Commissioner for Standards



Report

to the

Committee on Standards and Privileges

of the

Northern Ireland Assembly

on a complaint

From Mr John Dallat MLA

Against Mr Ian Paisley Jnr MLA

300 June 2008

Role of the Interim Commissioner for Standards

1. I have prepared this report in my role as the Interim Commissioner for Standards of the Northern Ireland Assembly. In this role I am required to consider any matter referred to me by the Clerk of Standards relating to the conduct of Members, including specific complaints in relation to alleged breaches of the Code of Conduct which have been submitted to the Clerk. The Code of Conduct provides guidance to Members on the standards that should inform their approach to their Assembly duties.

In my role as Interim Commissioner I have been asked to examine a complaint made by Mr John Dallat MLA against Mr Ian Paisley Jnr MLA.

My role is to carry out an independent investigation of the complaint and present my findings to the Committee on Standards and Privileges. Any decision or action beyond my investigation is a matter for the Committee.

The Complaint

2. Mr Dallat complained that Mr Paisley Jnr had the benefit of a home which was being provided by a constituent and was not listed in the Assembly's Register of Members' Interests. In support of his complaint Mr Dallat submitted a copy of a newspaper article which gave details of an investigation by a journalist into the ownership of property occupied by Mr Paisley Jnr. The article also contained comments made by Mr Paisley Jnr refuting the allegations contained in the article.

The Code and Guide

3. Under a Resolution agreed by the Assembly on 14 December 1999, and the related Code of Conduct, Members are required to register their pecuniary interests in a Register of Members' Interests. The provision for such arrangements is contained in Section 43 of the Northern Ireland Act 1998 and, in particular sub-sections (1) to (4). Sub-section (6) of the legislation further provides that any Member of the Assembly who, inter-alia, takes part in any proceedings of the Assembly without having complied with, or in contravention of any provision made in pursuance of sub-sections (1) to (3), shall be guilty of an offence.

4. Failure to comply with, or contravention of, the requirements that underpin the Register of Members' Interests is therefore a serious matter. Equally, in my view, an allegation that a Member has failed to comply with or has contravened those requirements, if proved, has the potential to seriously undermine a Member's reputation.

Conduct of the Investigation

On receipt of the complaint I noted that the allegation by Mr

Dallat appeared to be informed only by a newspaper article.

Therefore, mindful that the Guide, at paragraph 66, states, inter alia, that "A complaint founded upon no more than a newspaper story or television report will not normally be regarded as a substantiated allegation" I enquired if Mr Dallat had any other relevant information to substantiate his allegation. He indicated verbally that he had such information however in the event he did not at that time following a reminder, present any additional or supporting information for my examination. Following a further reminder from me Mr Dallat offered to provide additional information from sources who he indicated wished to remain anonymous. I declined to accept any information provided on an

anonymous basis as I considered that it was essential in the interests of natural justice that any source providing information should be available to me for interview and, more importantly, for Mr Paisley Jnr to have a meaningful opportunity to test and challenge any information submitted in support of the allegation made against him. I was confirmed in that view by the requirement in paragraph 66 of the Guide that "Anonymous complaints will not be entertained."

6. At the outset of my investigation I asked Mr Paisley Jnr for his comments on the allegation. He responded in writing and, in support of his position, he enclosed copies of correspondence dealing with his mortgage arrangements and also detailed documentary evidence from the solicitor who had acted on his behalf in the conveyancing of the property to him.

7. In commenting on Mr Dallat's allegation Mr Paisley Jnr told me:

"Mr Dallat claims that I have failed to register a benefit in the members register. The alleged benefit is the use of a home in the ownership of a Mrs Carol Sweeney.

Mr Dallat's complaint is based on an untruth on his part. I own my home in Bushmills. There is no question of that. I understand that land registry has not yet recorded the transfer of lands folio to my name when I bought the home in 2004, but once I was made aware of that administrative hiccup I instructed my solicitor to correct this registration matter. I am sure I am not the first person in Northern Ireland whose home has not been registered in the correct fashion by Lands Registry and no doubt I will not be the last. However, I believe I have done all that is required of me to register my home ownership. It is now up to the Lands Registry and my solicitor to resolve whatever matters require clarification.

For your assistance and on confidential bases I have attached a letter from my solicitor dated 22 October 2004 notifying me that the "purchase" of my home was "completed" on that date. Also, there is attached a copy of my mortgage agreement with the Northern Bank who would not agree to lend any amount of money without certainty that I was actually buying the house in question.

I think I can therefore be forgiven for believing the matter of registration was closed and complete at that time. I was as shocked as my solicitor to find out this matter was not completed.

I would also draw your attention to the comments made by the developer from whom I purchased my home on the BBC Nolen show and the Spotlight programme when he confirmed that I had purchased this home from his building company.

I take it as a gross insult of my character and my good name to suggest that I had the benefit of something I had not properly registered especially something as enormous as a home. Given that I pay a mortgage for my home like most people this ought never to have been a matter for public comment. I find it quite insulting that this matter has been dragged through the gutter press in this manner. It is both childish and degrading not for me as I have nothing to hide but for a parliament that claims to be occupied by those who claim to be fit to govern the people of Northern Ireland. John Dallat and those who are pursuing this matter along with him are letting not just themselves down but also those whom they are privileged to govern."

8. As the matter complained of involves the registration of ownership of a property, I sought independent legal advice as to the sequence of steps which should normally be followed in conveyancing of a property in Northern Ireland. I was advised as follows:

PROCEDURE FOR PURCHASING A PROPERTY

- (i). Purchaser's offer accepted by the Vendor
- (ii). Purchaser and Vendor instruct solicitors
- (iii). Vendor's solicitor forwards title deeds, property certificates and searches to the Purchaser's solicitor
- (iv). Purchaser's solicitor reviews documentation provided and raises requisitions if necessary
- (v). Purchaser's solicitor reports to the Purchaser on the title and reports on mortgage instructions which should have been received if mortgage required
- (vi). Once satisfactory replies to requisitions are received the Purchaser signs contract and contract is forwarded to the Vendor's solicitor
- (vii). Vendor signs contract
- (viii). Deposit to be paid by the Purchaser to the Vendor within 5 working days of receipt of copy accepted contract
- (ix). Purchaser's solicitor reports to the mortgage company and requests funds, or requests funds from the Purchaser
- (x). Purchaser's solicitor drafts deed and forwards same to the Vendor's solicitor for approval and execution

- (xi). Funds are forwarded to the Vendor's solicitor and completion takes place
- (xii). Stamp Duty Land Tax (SDLT) must be submitted to Her Majesty's Revenue and Customs (HMRC) within 30 days of completion.
- (xiii). Once SDLT Certificate is received from HMRC, the Purchaser's solicitor lodges the deed and mortgage (if any) in Registry of Deeds. If the title to the property had previously been registered in the Land Registry this step can be ignored and the deed and mortgage will be lodged directly in the Land Registry.
- (xiv). Once the documents are registered in the Registry of Deeds and returned to the Purchaser's solicitor the documentation is then lodged in the Land Registry for registration under the Compulsory First Registration scheme.
- (xv). Upon completion of registration in the Land Registry, the Land Certificate will be returned to the Purchaser's solicitor who will, if a mortgage is in place, forward the title to the Purchaser's Lender. If a mortgage is not in place the Purchaser's solicitor or the Purchaser himself may retain the title.
- 9. I noted from the papers provided by Mr Paisley Jnr that the invoice he received from his solicitor, dated 22 October 2004, includes reference to the receipt of a mortgage advance from the Northern Bank and a charge for "Land Registry Fees". I further noted that the letter enclosing the invoice described the purchase as "now completed".
- 10. In light of the papers submitted by Mr Paisley Jnr and following receipt of his permission for the disclosure of details by his solicitor to me, I obtained further information in relation to the house purchase. I asked the solicitor to identify the date on which mortgage funds had been drawn down and the date on which they had been paid to the vendor. I also asked as to the date on

which application had first been made to the Land Registers for registration of the property in Mr Paisley's name.

In response Mr Paisley's solicitor provided the following chronology:

- Northern Bank mortgage monies received on 20 October 2004
- Purchase monies paid to Vendor's solicitors on 20 October 2004
- Papers sent to lan and Fiona Paisley for signing on 4 November 2004.
 They indicate that documents never arrived.
- Replacement papers received by us from Vendor's solicitors on 14
 September 2007
- Replacement papers taken to lan and Fiona Paisley for signing on 19
 September 2007
- Land Registry fees received from Ian and Fiona Paisley on 19
 September 2007
- Papers lodged at Land Registry on 23 October 2007
- Papers returned from Land Registry, to be held pending receipt of SDLT certificate, on 30 October 2007
- Papers re-lodged at Land Registry with SDLT certificate on 15 November 2007
- Relevant papers returned to us from Land Registry, on completion of registration on 27 November 2007
- Title deeds and related papers forwarded to Northern Bank on 27
 November 2007
- 11. I examined the relevant records in the Land Registers and noted that notwithstanding the fact that the papers had not been

completed until 2007 the transfer document had been dated 20 October 2004. I asked the Registrar for comment on the Registry's handling of the case and the delay in registration of Mr and Mrs Paisley's interest in the property. She advised me as follows:

- The property was registered in the names of lan and Fiona Paisley on 26 November 2007
- The date that application for registration was first lodged in Land Registers was 23 October 2007. This initial application was rejected and the application was re-lodged on 15 November 2007
- The initial application was rejected as all the documentation required for registration was not lodged. The Stamp Duty Land Tax Certificate from Her Majesty's Revenue and Customs did not accompany the application when lodged on 23 October 2007. The Stamp Duty Land Tax Certificate did accompany the application when same was relodged on 15 November 2007. The Land Registers rejects all applications which are lodged without the requisite Stamp Duty Land Tax documentation.
- The date of completion of a contract is usually not the same date as the date of completion of a transaction. The former is the date when the contract to purchase the premises is signed by both parties. The latter is the date on which keys, vacant possession and the executed Transfer document are handed over in exchange for payment of the purchase monies. Once completion has taken place and the deeds have been handed over, the purchaser's solicitors must pay the Stamp Duty on the property within 28 days or penalties are payable- and once the Stamp Duty Land Tax Certificate is issued the documents can be lodged for registration. There is therefore usually a delay of several weeks between completion and lodgment of documents for registration.

- Where lands are registered in Land Registry there is no time limit for lodgment of documents but legal title does not pass to the purchaser until the Register has been updated with the purchaser's name. In a compulsory First Registration Transaction where the property is moving from the Old Registry of Deeds system to the Land Register there is a statutory obligation to lodge within 3 months of completion. The current transaction does not fall into this category.
- Whilst there is no time limit within which documents must be lodged in Land Registry a period of 3 years between completion and lodgment is unusual.
- The current transaction is the transfer of part of an existing folio and the creation of a new folio with Rights, Reservations and exceptions regarding the use of the land being contained in the Document. There is nothing unusual in the title to this particular property which is one house in a small development of 5 properties. The title of each of the properties is carved out of the original folio and each property now has its own individual folio which contains the property and title which was passed.
- 12. Having examined the information available to me I decided that further enquiries were necessary. I asked Mr Paisley Jnr to arrange for me to examine a range of records relating to the transaction held by both his bank and his solicitor. I subsequently interviewed Mr Paisley and his Bank Manager.

13. I established

- that the Bank had not issued any reminders to the solicitor or Mr Paisley in respect of the non-production of the Registration documents underpinning the Bank's advance of funds by way of a mortgage for the purchase of the property.
- the Bank had had the assurance of the solicitor's undertaking in respect of production of the title documents and the Bank regarded its advance to Mr Paisley to be well secured through a charge on other property.
- the Bank acknowledged nevertheless that it had been remiss in not following up this issue
- the Bank substantiated the information already provided to me by Mr Paisley Jnr by confirming the amount and timing of the advance made.
- the Bank records detailed Mr Paisley Jnr making the requisite repayments of the loan, and
- the original loan on the subject property is recorded as "redeemed" in March 2007 with the outstanding balance being the subject of a new financial arrangement.
- Mr Paisley was clear that the transaction had been a normal purchase. The selling agent had been O'Connor, Kennedy and Turtle from whom his wife had obtained a brochure. He believed he paid a holding deposit to the agent. He also explained that he had subsequently spoken directly with the

vendor and the builder as he wanted a number of minor alterations to be made to the property.

- 14. Mr Paisley's solicitor provided me with a folder containing copy papers relating to the purchase of the property. I asked my independent legal adviser to examine the papers and let me have comments. I was advised as follows:
 - The matter appeared to have proceeded in the usual way up until completion of the purchase. The purchase price was funded by a sum provided by the Northern Bank Ltd Home Loan and the balance by a cheque from Mr Paisley Jnr.
 - Following completion the Land Registry transfers were sent to Mr and Mrs Paisley for execution and these were said to be mislaid. The non return of the documents did not seem to have been realised by Mr Paisley's solicitor nor did Mr Paisley take any action to ensure the completion of the transaction. The Northern Bank equally took no action in respect of the non- deposit with it of the title deeds by way of security for its advance. It would seem that only the media stories in 2007 alerted those involved to the fact that the technical completion of the transaction was still outstanding.
 - The file did not contain a copy completion statement from the Developer and this was unusual. That statement would show any extras which may have been requested by the purchaser.
- 15. In reviewing the case further with my independent legal adviser, it was pointed out to me that the Stamp Tax and Land Duty Certificate issued by HMRC confirms only that a return has been lodged in respect of the transaction. Unlike the earlier Stamp

- Duty arrangements it does not confirm the Stamp Duty has been paid.
- 16. I considered the matter of the completion statement to be important and therefore wrote to the Developer's solicitor requesting a copy and, if it was available, a copy of the brochure for the property. Following a reminder they replied that on their client's instructions they were declining to reply substantively on the grounds of legal professional privilege.
- 17. I considered that, for the sake of completeness, I should clarify this matter and also confirm that the STLD had been paid thereby, in my view, completing the transaction overall. I therefore advised Mr Paisley Jnr of these points and also asked for confirmation from him in respect of the holding deposit he told me he believed he had paid to the Selling Agent.
- 18. In reply, Mr Paisley Jnr informed me:
 - that the Ballyallaght house was purchased on a Building Agreement with the developer. He (Mr Paisley Jnr) arranged for alterations and extras to the completed property to be carried out by the building contractor (who was not the developer) which was a verbal agreement.
 - that there had been an overpayment of tax for the year 2005/ 2006 and
 he had asked the HMRC to deduct from the repayment due any
 outstanding charge in relation to Stamp Duty. As he had not heard to the
 contrary from the HMRC he believed he had discharged any and all
 charges owing.
 - that whilst he had expected to pay a deposit and intended to pay a
 deposit to the developer's Agents, O'Connor Kennedy Turtle, he could
 now confirm that in the event he put his solicitor in funds with the full
 purchase price and it was not necessary to pay a deposit but rather his

solicitor used all the monies together to complete the purchase.

Evaluation of the Complaint

- 19. Whilst, in the event, the basis for Mr Dallat's complaint relied solely on a newspaper report I considered that in light of the seriousness of the allegation in respect of the Members' Register of Interest, the matter warranted detailed examination and clarification and as such the complaint fell outside the limitations set out in paragraph 66 of the Guide. (See paragraph 5).
- 20. Mr Paisley Jnr has stated that he believed that all matters relating to the purchase of the property had been completed. He has provided me with evidence he considers supports that position. The further enquiries I have made indicate that between November 2004 and the newspaper article of September 2007, neither the Bank nor his solicitor followed up with Mr Paisley Jnr the outstanding matters in respect of the registration of his legal ownership of the property.
- 21. The omission of registration of the transaction with the Land Registers led to a situation in which Mr Paisley Jnr did not in fact have legal title to the property notwithstanding the fact that he

and his wife had assumed the responsibility of repaying the loan to the Bank in respect of the advance which had been made. My understanding however is that Mr Paisley Jnr and his wife would, if required, have had a strong case in court that they had established a beneficial interest in the property.

- 22. Finally, in respect of the issues referred to in Paragraph 18, I have noted Mr Paisley's responses and am satisfied that the issues are not directly material to the complaint lodged by Mr Dallat.
- 23. The complaint by Mr Dallat is founded on the view that in the absence of legal title Mr Paisley Jnr must have been aware that he was enjoying a benefit provided by the legal owner which he, Mr Paisley Jnr, had not registered.

Based on the information which I have been able to identify in my investigation it is clear that it was reasonable for Mr Paisley Jnr to believe he had completed the purchase of the house. He and his wife were repaying a loan used to fund the purchase of the property and their solicitor's letter of October 2004 stated that the transaction had been completed.

No evidence has been identified to substantiate the complaint that Mr Paisley Jnr was enjoying a benefit from a constituent which should have been included in the Members' Register of Interests.

Dr T Frawley

Interim Commissioner for Standards

Report on a Complaint by Mr John Dallat MLA Against Mr Ian Paisley Junior MLA						

Appendix 2

Letter of Complaint by Mr John Dallat







Constituency Office:

11 Bridge Street, Kilrea, COLERAINE, Co Derry. BT51 5RR

27 September 2007

Dear Sir

I see from the attached newspaper article that is clear that an MLA has the use of a house he does not own. According to the Government's own Land's Registry office, the house in question would appear to be owned by a constituent of the named MLA.

I would like to make a formal complaint that an MLA has the benefit of a home which is being provided by a constituent and is NOT listed in the member's interests at the Assembly.

As the Interim standards Commissioner, 1 formally request that you investigate this matter forthwith.

Could you please let me know by return of post that you have received this letter and that this omission from the Members' Interests is being investigated.

Yours sincerely

John Dallat MLA

Report on a Complaint by Mr John Dallat M	ILA Against Mr Ian Paisley J	unior MLA	

Appendix 3

Proceedings of the Committee Relating to the Report



Wednesday, 11th June 2008 Room 135, Parliament Buildings

Present: Mrs Carmel Hanna (Chairperson)

Mr Willie Clarke (deputy Chairperson)

Mr Allan Bresland Mr Francie Brolly Rev. Robert Coulter Mr Alex Easton David Hilditch Mr Alastair Ross Mr George Savage Mr Brian Wilson

In Attendance: Dr Kevin Pelan (Assembly Clerk)

Miss Eleanor Murphy (Assistant Clerk) Miss Carla Campbell (Clerical Supervisor) Mr Lindsay Dundas (Clerical Officer)

Apologies: Mr Paul Maskey

The meeting opened at 1.05pm in closed session.

Report by the Interim Commissioner on a complaint against Ian Paisley Junior MLA

The Chairperson referred members to the Interim Commissioner's report and emphasised the need for Members to keep focussed on those aspects of the report that related to the substance of the complaint.

Mr Wilson joined the meeting at 1.06pm.

Dr Frawley and Mr MacQuarrie joined the meeting at 1.07pm

The Chairperson invited the Interim Commissioner for Standards Dr Tom Frawley, who was accompanied by Mr John MacQuarrie, to make a presentation on the report.

Mr Hilditch joined the meeting at 1:11pm.

Mr Savage joined the meeting at 1.17pm.

Dr Frawley and Mr MacQuarrie left the meeting at 1.36pm.

A discussion of the report followed the presentation by the Interim Commission.

Agreed: The Committee unanimously agreed that the complaint could not be substantiated on the

basis of the evidence presented and, therefore, that Mr Paisley Junior had not breached the

Code of Conduct.

Mr Brolly joined the meeting at 1:46pm.

Consideration of Draft Report on the Complaint Against Mr Ian Paisley Jnr.

Members considered the draft report on the complaint against Mr Ian Paisley Jnr.

Front Cover – Read and Agreed.

Committee Powers and Membership - Read and Agreed.

Paragraphs 1-9 – Read and Agreed.

The Clerk advised Members that the minutes of proceedings of the meeting would need to be agreed for inclusion in the report.

Agreed: Members agreed that the Clerk would circulate the minutes of proceedings for agreement.

Agreed: Members ordered the report to be printed.

Press Release.

Members considered the draft press release relating to the report.

Agreed: Members agreed the draft press release subject to one amendment.

The Chairperson adjourned the meeting at 1.51pm.

Mrs Carmel Hanna

Chairperson, Committee on Standards and Privileges. 12th June 2008.

[EXTRACT]

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