



Northern Ireland
Assembly

**COMMITTEE ON STANDARDS
AND PRIVILEGES**

OFFICIAL REPORT
(Hansard)

**Inquiry into enforcing the code of conduct
and guide to the rules relating to the
conduct of Members and the appointment
of an Assembly commissioner for
standards**

10 February 2010

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rules relating to the conduct of Members and the appointment
of an Assembly commissioner for standards**

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Members present for all or part of the proceedings:

Mr Declan O’Loan (Chairperson)
Mr Willie Clarke (Deputy Chairperson)
Mr Allan Bresland
Mr Trevor Clarke
Rev Dr Robert Coulter
Mr Billy Leonard
Mr Paul Maskey
Mr Alastair Ross
Mr George Savage

Witnesses:

Dr Tom Frawley)	Interim Assembly Commissioner for Standards
Mr John MacQuarrie)	Northern Ireland Ombudsman’s Office
Ms Felicity Huston)	Commissioner for Public Appointments Northern Ireland
Mr Jeff Cuthbert)	National Assembly for Wales
Mr John Grimes)	

The Chairperson (Mr O’Loan):

We move to our first evidence session with Dr Tom Frawley, who is the Interim Assembly Commissioner for Standards. He is accompanied by Mr John MacQuarrie, who is director for standards and special projects at the Ombudsman’s office. Tom and John, you are very welcome

and thank you for attending. You have already submitted written evidence and I thank you for it.

Members will find the full submission from the Interim Assembly Commissioner for Standards in the submissions folder. Tom has been our Interim Commissioner for many years, and he is in a unique position to give evidence to this inquiry. Members will have read Tom's submission and will know that it touches on a number of areas. In particular, it looks at three different models that the Committee might consider when it comes to appointing a commissioner.

Tom, please give us a preliminary outline, then members may have some questions for you. Members, I draw your attention to some possible useful areas of discussion with all of today's witnesses.

Dr Tom Frawley (Interim Assembly Commissioner for Standards):

I thank the Committee for inviting me to contribute to its inquiry on the appointment of an Assembly commissioner for standards, on maintaining the Northern Ireland Assembly code of conduct, on the 'Guide to the Rules Relating to the Conduct of Members' and on the handling of alleged breaches of the code of conduct.

By way of background to the paper to which you have already referred, it might be helpful if I draw the Committee's attention to a number of points in it that may be relevant. First, in relation to the arrangements underpinning the appointment of a commissioner, it is essential that the commissioner's office is perceived to be independent of the Committee and of the Assembly and, therefore, impartial and objective in the conduct of its work. Secondly, it is essential, in any model that is agreed, that the Committee on Standards and Privileges remains at the centre of decisions that are taken as a result of the commissioner for standards' investigation of a complaint against a Member. Finally, at the outset, the model that is decided on should be proportionate to the task involved and affordable, not least in light of the current and developing pressures on the public finances.

In so far as maintaining the code and the guide is concerned, I reiterate the comment in my written submission that they should be living documents. They need to be kept under regular review to reflect developments in governance standards and to facilitate a prompt response to any specific issues that may arise; for example, an issue that has been identified as a result of a commissioner's report on the investigation of a complaint.

The administration and investigation of alleged breaches of the code and guide must be central to the commissioner's role. The challenge of the investigative process is to strike a difficult balance between an investigation that delivers an effective response to the complainant, fairness to the Member accused of a breach, and effectiveness for the Assembly in safeguarding its reputation and, importantly, demonstrates transparency to facilitate accountability to the public. Whether the interim process currently achieves those objectives is a matter for the Committee to judge.

The submission also reflects the view that the Committee and, through it, the Assembly should continue to have primacy in the handling of allegations of breaches of the code and the guide that could be seen as supporting a perceived soft option of self-regulation. However, adherence to the principles of openness and transparency will address that perception and protect the primacy of the voter in judging the performance of an elected representative. The Committee has demonstrated its commitment to those principles by publishing, as an appendix to its own report, investigation reports on a complaint in each case that has been reported on thus far. All details of the commissioner's investigations are, therefore, in the public domain and open to public scrutiny, and can be tested against the Committee's and the Assembly's final judgement on any individual case.

In conclusion, I refer to the fact that is also reflected in my paper that the quality of any system of governance ultimately depends on behaviour, not process, with the result that there is a limit to the extent to which any regulatory framework can, of itself, succeed in delivering good governance. However, as the submission emphasises, the objective of achieving good governance requires a strong commitment to achieving the best possible outcomes at every stage of the system's operation on the part of all the stakeholders involved with the process. I believe that that commitment is shown if it can be demonstrated that there is fairness in the provision of a transparent, impartial, confidential system that is capable of offering appropriate outcomes by providing access through ensuring that the system can be easily utilised by a complainant; by delivering responsiveness in what the Committee does with the complaint once received and, critically, by the action that is taken on complaints about the complaint process itself; by delivering effectiveness through an ongoing evaluation of the process to ensure that the complaints system is credible and effective for all stakeholders involved with the process — the complainant, the Member complained of, the Assembly and, ultimately, the public — and,

finally, by demonstrating accountability through ensuring that the complaints system is open to scrutiny by all.

I commend that approach to the Committee as a basis for its determination on how to move forward with this important review.

The Chairperson:

Thank you for your opening statement. I invite members to ask questions.

Mr W Clarke:

Thank you for your presentation. I wish to make a point about the appeals process. Over the years, people from organisations that made complaints felt that, at times, they did not get a fair hearing and that they did not get the justice that was required. Could you give the Committee your thoughts on the appeals process or the possibility of such a process?

Dr Frawley:

In my daily work as an Ombudsman, I can honestly say that people who get an outcome that they are happy with are incredibly happy with the Ombudsman. People who do not get such an outcome are not happy. People enter a complaint process with a particular expectation, and if it is not met, there is clear potential for them to be dissatisfied with the process and the outcome.

It is reflected to date that an Assembly Member is subject to a fairly robust examination by the investigating process. Part of the difficulty may be that the complainant is not at hand, if you like, in presenting their complaint to a Committee or even participating in the process when the Committee hears the complaint. It is very difficult to see how that could be facilitated. Therefore, if there is an appeals process within the way that the Committee operates, the ultimate authority in those matters is the Assembly, where the final judgements are made if they are not recommended or accepted. That, in turn, has the potential to be the subject of the perception that party politics inform complaints. It is very difficult to separate that out, given the nature of this place.

I am not clear how one could get an appeals process to work in the circumstance in which people would feel that, having had an outcome from the investigation, they would then want to appeal the decision of this Committee. The only place to go to with that would be the Assembly,

but, in the main, the reports that have a sanction assigned to them go to the Assembly anyway. That is where the debate takes place on the merits of the conclusion reached by the Committee and on the thoroughness of the investigation.

In the nature of the processes, it is inevitable that that is the limit to the legislative authority. I am unsure whether there would be any merit in challenging by judicial review the administrative process that was applied by the Assembly. That would be hard to envisage, although I am sure that it is possible.

Mr W Clarke:

Your correspondence referred to the impartiality of the commissioner and the fundamental requirement that he or she should have no baggage that would prejudice any decision making. Can you elaborate on that? Does that include membership of political or secret organisations?

Dr Frawley:

It is fundamental that the appointee does not have any interest or affiliation. That is key. As a starting point, the commissioner must be free from any party political association. In other words, he or she must not be a member of a party or be perceived to have an active interest in party politics. Equally, he or she should not be a member of any organisation or association which would have or be perceived to have any religious or community restriction on its members.

Essentially, the commissioner should be subject to the same restrictions on membership of organisations or political parties that apply to members of the Senior Civil Service, for example. The question of parallel employment is a dimension of that that would have to be considered in the light of the circumstances. However, in principle, the person should not have a continuing or recent commercial or advocacy interest or role with any political, public, private or voluntary sector organisation. A number of offices that already carry those limits come to mind, for example, the Comptroller and Auditor General and the Northern Ireland Ombudsman. Those are the requirements for those two offices. I do not consider the case for impartiality to be any stronger than it is for those offices. However, the objectivity and independence of the appointment process through which the post is filled is central. The short answer is that it is vital that the process is impartial. It is a straightforward matter of good governance. As I said, that is already standard practice for the appointment of senior staff to some of the key offices associated with the Assembly.

Rev Dr Robert Coulter:

In your written submission, you noted that commissioners in other places provide advice to Members about the registers of interests. However, you have pointed out some concerns with that approach in respect of the time impact and potential conflict at a later stage, if there were ever to be an investigation. Will you elaborate further on that? How, on the one hand, can a Member can get advice, yet, on the other hand, get around the problem of a later investigation?

Dr Frawley:

As Rev Coulter said, I commented in the paper on the time that is needed to deal with inquiries. A former Commissioner at Westminster commented that some 70% of her time was devoted to giving guidance on the code and the register of interests. However, as I have said on a number of occasions, I firmly believe that in order for an investigation to be accepted as impartial by the person under investigation, the complainant and the public, the investigator should not have had previous involvement in offering advice about any matter that may be the subject of a complaint at a later date. In some cases, the investigator may be perceived as being prejudiced if he has already offered a view on the matter. In other instances, he may be compromised, particularly if the advice that he offered was followed by the Member who is being complained of.

I believe that the present Northern Ireland arrangements, which clearly separate the role of advice and investigation, provide an optimum model. Again, obviously, there are other perspectives on that, but I think that that separation is important. For example, and this might help the Committee, as Ombudsman, I receive many consultation documents every day from Departments and other bodies that seek my view on those. I am always reluctant to give a view, and I rarely do so, because my judgement on how a consultation was undertaken or how a policy was developed may be required at a later date. If I was to provide a view, people could say, "Well, it is interesting that you take that view; however, this is what you said at the time". That is why I think that there is real merit in separating the two functions.

I am sure that one of the other things about the current arrangement that appeals to members of the Committee is that I am not even physically present in the Building, and that highlights the separation of the role of investigation from the overall day-to-day business in this place. That, in turn, means that, to provide advice, I would have to be accessible and available to Members as they go about their daily business. There are some practical reasons for separation, but the

principal reason is that it protects the impartiality and the independence of the commissioner.

Mr Savage:

Who decides ultimately whether a Member has breached the code of conduct?

Dr Frawley:

In the current model and the one that I am commending to the Committee, the Committee would make that decision, but the Assembly would make the ultimate decision if sanctions were involved. I believe that — I might take a different view from others on this — it is absolutely incumbent on the investigator to investigate and to provide all the evidence and a view on whether relevant codes or rules have been breached. However, that evidence must be presented to the Committee, because that affords the Committee an opportunity to test the investigation and the process that informed it with the individuals affected, particularly the person complained of. In that circumstance, the Committee would make that decision. I am absolutely clear about that. As far as I am concerned, I report on the facts that are established in the investigation. Any difference of opinion between the Committee and me will be immediately evident when my report is published as an appendix.

At the end of the day, it is not for appointed commissioners to make the final judgement, because elected Members must be accountable to the electorate. The commitment to openness and transparency that is built into the present process ensures that voters are in a position to make an informed judgement. I do not believe that democracy is served if unelected and appointed commissioners make decisions about elected representatives whose accountability is to those who elected them. However, I want to focus on two caveats in what might be termed this self-regulation model. First, as recently raised in the review of expenses in Westminster, an atmosphere of undue deference must not be allowed to develop in respect of Members being precious about being questioned. I think that is important. Members must recognise their responsibility, be familiar with the code and register, and make themselves available and accountable when required to do so by an investigation.

My second caveat focuses on this Committee. Members might say that it is a bit untoward of me to raise it, but I will mention it anyway because, after today, I might have to hold my peace permanently. I believe that this point is a corollary of self-regulation. It demands that when Members participate in the business of the Committee, the integrity of the Assembly must have

primacy over party politics. If that spirit is met, self-regulation will work.

Mr T Clarke:

I wish to make an observation rather than ask a question, but I might try to phrase a question out of it later. Tom's paper is very informative. I would like to put that on record and commend Tom and John for the work that they have done for the Committee to date. I share some of the views, specifically that on page 6, where the commissioner indicates:

“There is not sufficient workload to warrant a full-time appointment in Northern Ireland”.

He suggests that the post would be part time, and I share that opinion. In his opening remarks, he referred to the cost restraints and pressures that we face in Northern Ireland. I do not think that anybody could question his independence. This is not a sales pitch for Tom Frawley or John MacQuarrie. I do not always agree with what Tom says, but that is what a democracy is about. I have only been a member of the Committee since September, but, in that time, they have shown impartiality and commitment to it. Tom comes to the Committee, he presents an excellent report, he is independent, and minimal hours have been spent on it. Indeed, in the paper he suggests that 200 hours have been spent on his Assembly work over the year. Perhaps I can frame a question by asking Tom to speak about the workload that he has served to the Committee over the past year. Perhaps that will give us better focus on the matter.

Dr Frawley:

I thank Mr Clarke for his kind remarks. He highlighted from the paper that, in 2008-09, Mr MacQuarrie and I spent roughly 200 hours on evaluating complaints, collating and considering evidence, drafting reports and presenting our conclusions to the Committee. When we prepared the submission paper for the Committee just before Christmas, we had assessed or judged that we had committed about 160 hours to the work. Therefore, we were roughly in the same place with three months of the year still to run.

The nature of the work is spasmodic. There are periods when one gets a large number of complaints, and there are also fallow periods. The Committee has been in a very developmental, dynamic stage in designing and revising codes, and so on, and I know that that has meant a lot of work for members and for the Committee Clerk. We have contributed in a limited way to that, so that is another part of the time contribution. However, once the codes are in place, that part of the work will reduce. Therefore, my sense is that it actually sits reasonably well. Ironically,

however, the immediacy of availability becomes an issue. When a complaint arises, it is not possible to say that we will come back to you in a fortnight, or that we will fit it in with something else. There is a need for primacy and priority, and therefore there has to be infrastructure, and I use that word advisedly. There must be, alongside the part-time element, a way of administratively supporting the role such that if people want to make a phone call or contact the commissioner it is possible to gain access. There is a balance to be struck.

The model has been accommodated within my office's overall capacity with a very limited investment of cost; I think we received £10,000, and up to £15,000 in the current year, for the overall work that we do on behalf of the Committee. I think that that is a defensible circumstance, and represents realistic and sensible way of doing things in the current economic atmosphere, as Trevor Clarke put it. The workload, the availability of the skill sets that Mr MacQuarrie brings to the task, and my own time can be fitted into the overall role of the ombudsman, but I think that part of the problem is that the interim First Minister — as I noted with some concern — described it as the interim ombudsman's office, and suddenly I became interim as the ombudsman and interim as the commissioner, so to speak. There is a potential for the roles to be confused.

It is in the nature of complaints against MLAs that there is a very high level of public awareness. However, it is helpful that the "brand" of ombudsman carries with it a significant standing in the public mind, which, in turn, reads across to the activity. Although there are issues in relation to crossover, the workload can be managed, the infrastructure is available, and the cost is defensible.

Mr Ross:

This Committee has certain powers to compel witnesses to come and give evidence under section 44 of the Northern Ireland Act 1998. Your office — the future Assembly commissioner, if you become full-time commissioner — will not have similar powers. Are there any powers that you think the office should have under legislation, or any functions that you want to be laid down in statute that would help you?

Dr Frawley:

As Interim Assembly Commissioner for Standards, I have not encountered any difficulty in obtaining documentation, or, indeed, comment from any individual. If that were to happen, I

would come back to the Committee and ask for your support in addressing the issue. In that circumstance, the Committee would be in a position to invoke the powers of the Northern Ireland Act 1998. However, for the avoidance of potential delay inherent in the present process, I believe that it would be helpful if the commissioner had express power to obtain all information necessary for an investigation and to compel attendance of witnesses and the production of documents. The authority would be underpinned by the power to refer any incident of obstruction or contempt back to the Committee.

It would also be appropriate for the commissioner to be protected from any requirement to disclose information obtained in the course of an investigation, other than to the Committee or a specified regulatory body, such as the Police or the Comptroller and Auditor General. There are issues in relation to freedom of information, and so on, that may need to be explored and tested.

It would also be useful for the commissioner to have power to engage external expert assistance; for example, in some areas of potential complaint, a forensic accountant might be helpful in looking at accounts, financial analysis, and so on. It is, therefore, important to have the opportunity and the authority to share information with such experts.

I would not be inclined to expand the current arrangements. I have a belief that an investigator must be seen as impartial. That requires separation from either advocacy in the area under investigation, or giving advice in relation to matters that could be investigated. Those are issues that could be addressed in any legislation that might follow whatever decision you take. In light of the developing circumstances, those are the sorts of areas that we could firm up.

Mr Ross:

What difference is there between the powers that you currently have, compared to those available to your equivalent in Westminster or other devolved institutions?

Dr Frawley:

I am not conscious that they have particularly significant additional powers. Some of them are very separate from the Committees, and, in itself, that presents a different circumstance and probably allows for a different framework. I am describing the powers that would apply with the model that I have commended to the Committee, rather than the model that might develop with a full-blown separate office, commissioner, and so on.

Mr Leonard:

Gents, you are welcome. It is good to see you, and I thank you for the work that have done. Tom, I was struck by your use of the word “proportionate” in an earlier answer, and I want to tease that out. We are always caught between the idea of administrating and demonstrating transparency, and the issue of cost. I am not reducing the entire debate down to pounds or euros, but, if proportionality were applied to the models, would a bit of the perception of transparency have to be sacrificed?

I am perhaps more concerned about a separated titled office sitting alongside another independent body, whatever that body may be. In the public mind, the body is, perhaps, not totally separate and totally dedicated to the role, but if it were totally separate and dedicated with its own infrastructure, it could cost more. Can you reflect on that conundrum in the various possibilities that you articulated?

Dr Frawley:

As Mr Leonard has suggested, all of the models have strengths and weaknesses. If the model of a full-blown independent office were adopted, it would demonstrate that the Assembly was taking the matter forward on the same basis as the devolved Administrations in other jurisdictions. That model mirrors broadly those that are used in Westminster, Wales and Scotland, and it would allow the commissioner to develop parallel processes. There is much merit in having the ability to draw on that crossover of experience of, and insight into, procedures and protocols.

From my background in health, I know that the devolved Administrations are taking different directions on that central issue, so models can develop differently. Circumstances can impinge on that. For example, as a result of the unfortunate recent circumstances at Westminster, different arrangements for Standing Committees and advisory groups are emerging, and all of those are beginning to have an effect on the design and the framework within which that work is undertaken. There are issues relating to the future role of the Parliamentary Commissioner for Standards at Westminster.

One of the issues that impacts on me is to do with proportionality. The downside of having a full-time office or even a part-time office is that the level of workload is a significant factor in choosing the model. If the single model is chosen, issues will arise over the downtime that is

involved in waiting for complaints to arrive. In 2007, we received 11 complaints; in 2008, we received nine complaints; and we are currently looking at eight complaints, which essentially cover five issues. We deal with a small number of complaints. That could always change, and one cannot predict circumstances.

A standing office to deal with those issues would represent an expensive overhead. A model in which there is an existing office recognises that there are periodic workloads, and that might be appropriate to our circumstances. I do not wish to sound like Job's comforter, but I am always conscious of the fact that our population is 1.7 million, which is not on the scale of Scotland's five million or, for that matter, Wales's three million. Therefore, our model must be proportionate, to repeat the word that Mr Leonard used.

Therefore, it would not be sensible to build on another office, which has a very separate system. I cannot emphasise enough how the system that supports the Committee works; it is completely separate from everything else that we do in its technology, in the information systems that are used, and even the access levels that people have to that information.

I do not want my evidence to become a job interview or an advocacy arrangement, because that is not what I am looking for; there are other offices that probably could carry out the task. I simply think that the present model works.

The other advantage of the present model is that, over time, the Committee can decide to move away from it. Committee members could say that the model has served its purpose and that we are in a different place, that there is a different scale of activity to what was originally predicted, or that there is a complexity that is not being addressed effectively. Once you have moved to a full-time office, it is very hard to move back.

The Chairperson:

Will you say anything more about the advantages and disadvantages of a fully independent office? Would there be any difficulties with the Assembly secretariat providing the administrative support to an independent commissioner? I ask that because those providing administrative support would arguably be dealing with the significant issue of the volatility and irregularity of business?

Dr Frawley:

That is another piece of the infrastructure that could be addressed in that way. However, using the Assembly secretariat to provide administrative support would run the risk of breaching the commissioner's impartiality, although not as an individual. The Assembly is a closed village; I will not call it a bubble, as other people might, but those who work in the secretariat are part of a system. They are multitasking, doing different things for different Committees, and there is crossover. There is also pressure, which can be, on occasion, informal. Members of the secretariat are under some pressure, and, at the end of the day, all government business needs to be transacted with confidence in confidentiality.

Therefore, I am not saying that that could not happen or could not be done, but there would be a risk of someone working alongside the individuals who were being investigated and a potential for crossover into party political insights and perceptions, which could contaminate the process.

Mr Bresland:

Have you estimated the additional cost to the Assembly of setting up a fully independent office?

Dr Frawley:

I could not even speculate on how much that would cost. I am only talking about my own office. The Committee Clerk could probably provide a more accurate estimate, because he would be able to get a sense of the costs from other jurisdictions. My understanding is that the posts in Scotland or Wales are not full time. Your next witnesses may be able to provide clarification on that.

Obviously, the number of days that people are allocated and the level of remuneration would form part of the cost. There are further costs from advice that is offered, both technical and professional. There would be other costs from the potential of the Assembly secretariat to provide administrative support to a commissioner, which the Chairperson alluded to.

My secretary is the admin staff at present. When we are producing and preparing a report, it is redrafted many times to get the right balance, although it the final version may not look like it. In those circumstances, it is good to have someone to support you. It is very hard to do those tasks individually. It is very important that I have Mr MacQuarrie available to me as a second in command. It is equally important that I have administrative support available to me. Those are overheads that you could calculate, but I could not put a value on them today.

Mr Bresland:

Would it possible to ask the Committee Clerk for that?

The Chairperson:

We can do that.

How could the Assembly hold to account a commissioner who was appointed as a separate titled office alongside another independent body?

Dr Frawley:

Clearly, the issue of accountability is vested in the Committee. It is always difficult in those independently created posts to get the level of sanction that people might feel appropriate. If the Committee wants someone who is independent, then making him or her accountable becomes quite a difficult issue. In my circumstance as ombudsman, I am accountable to the Assembly with regard to financial performance and activity performance. However, with regard to my judgements, the accountability for the ombudsman's office is through judicial review, which could happen at any time on any judgement that I make.

However, it is about the performance of the individual, and once the Committee has made one of those appointments, it becomes hard to see the circumstances — unless somebody stole the family jewels or silver — where you would say that you were not happy with the commissioner's decision or judgement. Someone will need to clarify what the basis of that accountability will be. Is it about the quality of the decision-making, attendance, the number of cases dealt with, or the time frames? Those are all reasonable questions.

One of the things that I have always argued, and which the Committee has never been comfortable with, is that the relationship between a Chairperson of a Committee and someone who is doing that work is quite important. It is hard to give account — at least as I understand it — to a Committee. It is a bit like an authority, and they need to build a consensus on the performance of the individual, set that down and then allow the individual to contribute to that debate. The accountability issue and how it is developed is important, and I cannot give the Committee an informed answer at this moment, other than the way in which I am accountable to the Assembly as an ombudsman.

The Chairperson:

Finally, you referred to the issue of overshadowing, whereby, because of the prominence of your role as interim commissioner, that may be associated with your work as the ombudsman, and you gave a clear example of that. How concerned are you about that issue, or how big a concern is it, in general, if it were not necessarily attached to your office but to any office?

Dr Frawley:

As the ombudsman, I have a risk register. One of the risks that I have identified is being the Interim Assembly Commissioner for Standards, because one of the key issues in any of our roles is reputation. Reputation is a huge factor in fulfilling one's function. In that situation, one gets into the sort of interchangeability of roles and the perception, particularly by the media in the way in which they speak about the ombudsman's office and how they have reported on an investigation into an Assembly Member. I remind them continually that it was the Interim Assembly Commissioner for Standards who reported on an Assembly Member.

However, that is part and parcel of the job. I am the Northern Ireland Ombudsman, the Commissioner for Complaints, and the Interim Assembly Commissioner for Standards. Those roles are interchangeable and people use them in that way. I go to meetings where I am described as the Commissioner for Complaints, the next minute I am the ombudsman, and then someone will describe me as the Interim Assembly Commissioner for Standards.

In a small jurisdiction such as this, it is inevitable, if one is to secure the best proportionate use of public funds, investment and infrastructure, that people will carry joint or dual roles. It comes with the territory, and one has to live with it and continually remind the opinion-formers, such as the media, that they are separate roles.

One of the issues in a design, depending on how you want to move from here, is whether you want a role within an existing office to investigate standards issues, or whether you want the office of a standards commissioner to be separate. That is a debate that you could have as well. I do not have a difficulty with that. On occasions, however, it has been a little frustrating.

At the end of the day, however, people will use language that makes sense to them. They will not be that worried about whether Frawley is the Commissioner for Standards or the ombudsman;

they will use whatever phrase comes into their heads at the time.

The Chairperson:

Those are all of the questions from the Committee. I thank you for what has been a very interesting and informative session. Your answers were very helpful, clear and forthright. Thank you very much indeed, and thanks also to John MacQuarrie.

Dr Frawley:

Thank you, Chairman and members.

The Chairperson:

The second evidence session is with Ms Felicity Huston, who is the Commissioner for Public Appointments for Northern Ireland. I welcome Felicity to the meeting. Thank you very much for attending. I know that you have not been well recently. You have put yourself out to come here today. The Committee appreciates your attendance all the more because of that. Thank you very much indeed.

The commissioner has submitted evidence in advance. Ms Huston's role as the Commissioner for Public Appointments for Northern Ireland is to regulate the process by which many of the public appointments in Northern Ireland are made. Very usefully, from our point of view, Felicity also chaired the selection panel for the newly set up Independent Parliamentary Standards Authority (IPSA) at Westminster, so she is in an excellent position to provide advice to the Committee on its inquiry. I ask Felicity to make some introductory remarks to the Committee, after which we will ask some questions.

Ms Felicity Huston (Commissioner for Public Appointments for Northern Ireland):

Thank you very much, Chairman. Rumours of my demise were perhaps a little exaggerated, but my staff were keen to plead my case. I apologise if I sound a bit croaky.

I am very pleased to be here. I am grateful for the opportunity to elaborate a little on the short paper that I submitted to the Committee earlier in response to its investigation into the potential for a standards commissioner. As the Chairman said, I have a variety of experience of what may be called ethical regulation and oversight of how it is implemented. As the Commissioner for Public Appointments, I write and prescribe the code of practice by which public appointments are

made. Public appointments, in this case, are those that are made by Ministers in our devolved Government. If all goes well, I will take over some of the more interesting public appointments that are currently made by the Northern Ireland Office Minister, such as certain ones relating to policing and justice, in the near future.

That is very much an oversight role of setting the standard, but I also have the power to investigate complaints. In addition, I carry out regular audits whereby I look in depth at how appointment rounds are being carried out and whether they have complied with my code of practice.

As well as that, I was a member of the House of Lords Appointments Commission (HOLAC) until September 2008. That body was set up by the previous Prime Minister so that it could no longer be said that he had all patronage over elevations to the House of Lords. He said that he would give the power to identify Cross-Bench members of the peerage to a separate organisation, which is one of the roles of HOLAC. It was chaired at that time by Lord Dennis Stevenson. As well as identifying Cross-Bench peers, which we did through a very open process, we also had a role of vetting for probity and integrity the party political peerages that were put forward by the various leaders of our political parties.

During my time there, members may recall the cash-for-peerages scandal, which resulted in the then Prime Minister being interviewed twice by the police. It was the House of Lords Appointments Commission that first uncovered that issue. We put various measures in place to try to prevent any inference that any people may be buying their peerages, for want of another expression. Therefore, I have also seen how things can go very wrong.

I have very recently chaired the selection panel for the Independent Parliamentary Standards Authority. We identified the chairman, Sir Ian Kennedy, and a collection of board members from a variety of specialisms, including a former Lord of Appeal, a former Member of the House of Commons, and senior Auditor General. That was quite an interesting experience, and I will elaborate on that a little as we go on.

One interesting point about the post that you are considering is the complicated relationship between an Assembly commissioner and the Assembly. As we are aware from the case of the three Members of Parliament being charged with accounting fraud, they are trying to appeal on

grounds of parliamentary privilege as a reason why they should not be taken to court. There is an interesting tension at the moment between the independence and supremacy of a Parliament vis-à-vis the need to have somebody in place to demonstrate openly to the outside world that they are there to make a judgement on elected representatives when something goes wrong. It is a difficult area.

The Committee asked Tom Frawley earlier about accountability and so on, and that is very problematic. However, taking into account the issues within the greater political world about people's opinions of elected representatives, it is important that an Assembly commissioner would have the necessary authority to do what he or she is asked to do. It is important to clearly see that he or she is independent of those who are regulated.

As Commissioner for Public Appointments, there is great difficulty around the rather nebulous statute that set up my office. I do not have clear independence or what anyone would measure as independence. I do not have my own staff, a delegated budget or clear sanctions. Until recently, I was based in Castle Buildings surrounded by a Department that I regulate and that funds me. That is a constant difficulty. The general public do not see me as the independent regulator that I should be because of those circumstances; nor does the Northern Ireland Civil Service, because it holds the purse strings.

Members will be aware that OFMDFM is cutting staff. One of my staff is being taken from me, which is a disproportionate cut compared to those being applied to anybody else in the Department. It is almost a case of, if I regulate them and say things that they do not like, look what happens. It is important that when a commissioner is in place, he or she has the control or the trappings of independence that are necessary. That does not have to be a grand panoply of staff, but they must have clearly defined independence that can be measured, and statute that clearly lays out what they can and cannot do.

The commissioner should also be able to take complaints directly. I believe that complaints currently come through the Committee, but I think that there is an issue as to whether people might think that that is a filter. That has to be looked at carefully, and there must be some way of making clear sanctions, because we are aware of what is going on in Westminster.

The Parliamentary Commissioner for Standards, John Lyon, has investigated a complaint,

found that an MP has not followed the codes of conduct, and then, to the amazement of the general populace, the MP has merely been asked to apologise to Parliament. In one or two cases, people have been astonished that that was all that was asked, and that is because the report went to the Committee in London and that was the result of it. That is an important issue, but it is a difficult one because of the importance of the supremacy of the Assembly. The Committee cannot be seen to be interfered with either. There is no easy answer to that.

I expect that the commissioner will be appointed by the Assembly, and I think that the person in post should be able to be removed only if they had gone bad. The Comptroller and Auditor General can be removed under extreme circumstances, and I think that you would have to have that in place as well. Otherwise, there would be a belief that the commissioner could be removed if they do something that the Assembly does not like. We remember what happened to Liz Filkin in Westminster as Parliamentary Commissioner for Standards. She asked too many difficult questions and found herself removed from her position. Even though I have heard arguments that that was quite appropriate, it is remembered by a lot of people who take an interest in this form of governance.

One of the key ways for providing accountability and stability is fixed-term appointments. There are lots of models for such appointments. My appointment was for three years, with the potential for another three-year period. I stated in my code of practice that no one should be appointed for more than 10 years to any post, because that is long enough for all sorts of reasons. The difficulty with short appointments, with the potential for a second one, is that towards the end of the first appointment, one has to provide caveats to any plans. I find myself having to say that I will do such and such — if I am still in place. That happens after around two and a half years. There is also the worry that, if I upset the First Minister and deputy First Minister, they will get rid of me. Three years is not very long. My colleague in England was in office for a three-year term, but she asked to have the legislation changed, and she now has a fixed five-year, non-renewable term. Janet Gaymer knows how long she will be in office, what she can do, etc. Unless she goes bad, she has security of tenure.

The Police Ombudsman has a seven-year term, which is quite a long term, but, because it is a fixed term, there is no concern; he does not have to look over his shoulder and wonder whether his political masters will decide that he should move on because he is asking too many difficult questions. A fixed term is also important for planning purposes, and it is a good way of giving

clarity to the post and showing that the Assembly has set it up to be independent.

I will briefly speak about the appointment of the commissioner. I am very keen on open and transparent competitions. Those are carried out for all public appointments where I have any say, and it is important that that should be the same for the Assembly commissioner. The days of the tap on the shoulder should be gone. They have not gone, but they are fast disappearing. However, strangely enough, people still get appointed to posts, and no one knows how it happened, just that those chaps got the jobs. That would be a terrible message, and I am sure that it is not something that you are thinking of doing.

The competition for appointment to the Independent Parliamentary Standards Authority (IPSA) was run in the autumn. The legislation went through Parliament during the summer at something of a gallop. It was the Dangerous Dogs Act 1991 all over again, but this time it was for MP regulation. It is riddled with difficulties, including that of the definition of the individuals who would sit on that authority. We did what we could with it; I was asked to chair the panel by Mr Speaker Bercow, which was organised by the Ministry of Justice, and the competition was run with the help of headhunters because the team of civil servants involved had very little experience of such work. They did a good job, because a lot of people applied to the panel for appointment. There was an advertisement in 'The Sunday Times' and all the usual stuff.

The selection panel included me; one of the assistant Comptroller and Auditor Generals; a former Lord of Appeals, Sir Christopher Rose, who some of you may know as the Chief Surveillance Commissioner in the UK; and an assessor who works with my colleague in England. The panel was given authority to go ahead and make the selection.

One of the biggest difficulties was that we were in the midst of a firestorm of stories and constant policy changes from Number 10 at the time of the interviews. Christopher Kelly published his report in the middle of the interview process, so that made life rather exciting. Please, if you are planning to run a recruitment competition, any controversial reports about it should be published either side of the interviews, not in the middle of them. One had to say, at the beginning of the day, that, at that point, there was a Commissioner for Standards but we were not sure whether there would still be one by the end of the day. Things like that made it very difficult.

Despite that, it was interesting to see the enthusiasm that the general populace had for coming forward. We had difficulty finding people in some of the specialist categories, but a lot of lay people were very keen to become involved because they were very exercised about what was going on in our Parliaments.

We shortlisted, interviewed etc, and then we were placed in a slightly unusual position in that the Speaker was not going to make the appointment; he was going to take the names to the Speaker's Committee for the Independent Parliamentary Standards Authority, which would then make a recommendation to Parliament. I presented the names to the Speaker, and he took it to the Speaker's Committee, which is a new structure in Westminster. That Committee accepted the names and the Speaker's recommendations, but they were still subject to debate in Parliament. You may remember the outbreak of concern about what Sir Ian Kennedy's salary might be. Then later, when a former MP was selected, there was a lot of concern that the particular candidate was not as representative of the main parties as they had expected. That was a bit challenging for them. I know that there were complaints about various things, but nobody said that it was not an independent process. It worked quite well in that way.

There was talk about the criteria, and, if you pass legislation, please take a deep breath before the criteria for the post are drawn up, because I was convinced that not even the archangel Gabriel could have fulfilled all the criteria for the post of Chairman of IPSA, as there was such a collection and a wish list contained in it. Therefore, it is important to look hard and realistically at what can be done and what is needed.

The other issue with IPSA that fell out of the wash from Sir Christopher Kelly's report was that a commissioner was to be appointed for the Independent Parliamentary Standards Authority to take complaints about MPs and their allowances and whatever else IPSA might end up doing. However, that role has changed and has been, one might say, downgraded to that of a compliance officer, and the Government have said that they will change the legislation to address that. I am not really sure what the thinking was behind that, except that it was going to cause confusion with the commissioner in Parliament already.

The nub of the issue is the increasing number of regulators that we are producing in Northern Ireland as a model of what is going on everywhere else. I agree with Tom Frawley's view that the post does not need to be full time. I sincerely hope that it does not need to be a full-time job

because that would suggest a very disgruntled population. The post could perhaps be joined with that of another investigative commissioner.

There has been a major review of all commissioners and regulators in Scotland, and there has been some bringing together of posts. For example, my colleague, the Commissioner for Public Appointments in Scotland, will have a shared service with a commissioner for their Parliament. It is a way of reducing the number of those roles. Her post is not full time, nor is the other commissioner's post. A shared service is a way of keeping staff, because people are needed to continue the work and to answer the phone and to deal with the press when they are looking for the commissioner. However, the jobs do not need to be full time. I do not think that Northern Ireland needs yet more commissioners, as that would cause great confusion.

Those are just a few thoughts. I am happy to answer any questions.

The Chairperson:

Thank you for that useful introduction.

Mr Leonard:

You are very welcome. The next step for this Committee is that we cannot be protective, and we need to have a bigger goal. You spoke of a few issues, such as the danger of the Committee being seen as a filter and the trappings of independence. What is on your mind in relation to that? I want to tease out the relationship between the commissioner and the Committee to show to the public that the process is thorough, dedicated, and transparent and that the commissioner's relationship with this politicised Committee, although we have bigger-than-party interests, will not be damaging to the process.

Ms Huston:

That is one of the greatest difficulties at the moment. The public's opinion of the political class is at its lowest since goodness knows when, and what has gone on with the Committee in Westminster has not helped at all, because it has been seen to protect its own. That is how the public see it. The Speaker's Committee that was set up to help to put IPSA in place, among other things, was filled with people who were also on the Standards Committee. One could think of several people who are notorious in the press for their desire to protect Parliament to the exclusion of all else. Therefore, a terrible distance has come about, and it will be interesting to

see how many of those people will be back in their constituencies after the elections.

There is a terrible problem, as everyone thinks that all parliamentarians are there to look after themselves and their friends, to put it bluntly. Therefore, one needs to have a commissioner to whom one can take a complaint directly. My understanding is that, at the moment, a complaint must go through this Committee. You must appoint somebody who has the sense to judge whether a complaint is vexatious. The person who is appointed will not take just any old complaint. I think it shows a maturity on all sides if you do not feel the need to protect yourselves and decide whether someone has a valid complaint or not. That should be appropriate, and it is an issue for the Ombudsman, because complaints about the Health Service have to come through MLAs to him. That is a barrier for people who wish to make personal complaints. For the sake of demonstrating openness, it is important to have that independence, and it show would great maturity.

Independence means having an Assembly commissioner who is unlikely to have his or her budget cut or staff taken away. It means that the commissioner should be given his or her own offices and so on, and he or she should not be at the whim of those who write the cheques. It was suggested that those staff should be part of the Assembly secretariat. I do not understand in sufficient detail how staffing works in the Assembly, but that might raise issues. My staff are technically OFMDFM staff, and that is why one of them can be taken away from me. It is important that staff belong to the commissioner in whatever structure the office takes.

It is also important that the commissioner has the freedom to spend his or her budget as he or she wishes, within the constraints of accepted practice and the requirement to submit accounts to the Assembly. My colleague the Commissioner for Public Appointments in Scotland has such duties, and she has her own budget. It is important that the commissioner can tell the public that he or she is his or her own man or woman and that, although they work with the Committee and the Assembly, they have not been assimilated by the structure.

Mr Leonard:

Otherwise, they become part of the same institution.

Ms Huston:

Yes, and what would be the point in that?

Mr Leonard:

Therefore, some sort of statement or guidelines on the relationship between the Assembly and the commissioner's office is as important as everything else.

Ms Huston:

Yes, it is.

Rev Dr Robert Coulter:

I hope that I am correct in interpreting your belief that the commissioner must have clear statutory powers to enforce his or her findings. What exactly do you mean by that? Are you saying that, for example, if the commissioner were to consider that a breach had occurred, the Committee should not have a role in coming to that conclusion? Do you believe that the commissioner's independence should put him or her above the collective elected Members of the Assembly?

Ms Huston:

As I said earlier, that is a great difficulty, given the public perception of how parliaments work. At Westminster, the approach of the Committee on Standards and Privileges has caused people to feel that such a structure merely looks after its own and does not do the right thing. If the commissioner were to be above Parliament, that would create tension because the only person who is above Parliament is the Queen.

The commissioner should be able to make a judgement and a deliberation on a complaint and impose a suitable sanction. Should there be an issue with that, it should perhaps be for the Assembly, rather than merely the Committee, to debate. That is not because the Committee would be an inappropriate structure to make a judgement, but because, in the current environment, people have lost faith in that sort of set up. That reality is reflected in the newspapers and can be heard when talking to people.

Rev Dr Robert Coulter:

So, do you think that the commissioner should not have enforcement powers?

Ms Huston:

I am very aware that I have no powers, apart from being able to name and shame. My colleague

in Scotland, however, has the power to halt a competition if a Minister is not complying with the code of practice. If a Minister fails to comply with the code of practice, the Commissioner for Public Appointments in Scotland may make a report, which is laid before Parliament and discussed. One can see that sort of process, through which a Member can be sanctioned, being used. If a parliamentarian were to feel that that sanction was inappropriate, perhaps there could be a mechanism for bringing the matter to the Assembly.

Rev Dr Robert Coulter:

Would that also apply to Ministers?

Ms Huston:

A code of conduct is proposed for the Assembly, not for Ministers. The Commissioner for Public Appointments in Scotland has a code of practice for ministerial appointments, so that is why she deals with Ministers, as do I. A Ministers' code of practice is a different matter. I did not think that the Assembly commissioner would deal with Ministers, but I may be wrong.

Rev Dr Robert Coulter:

The problem is one of differentiating between when a Member is acting as a Minister or as a Member for his or her constituency.

Ms Huston:

Yes, that is one of the difficulties. It depends on the nature of the complaint. I presume that the subject of a complaint would differ depending on whether it relates to a Member acting as an MLA or as a Minister.

The Committee Clerk:

The new code of conduct clarifies the extent to which the scope of that code applies to Members who are also Ministers.

The Chairperson:

You referred to an open and transparent process. Does that necessarily mean running a publicly advertised competition with a defined post, role specification and eligibility criteria? How is that reconciled with the suggestion that the new office could be tagged on to another public office?

Ms Huston:

The post must be advertised publicly. I do not think that producing an Assembly commissioner from out of a hat, as the public would see it, and presenting that person after some form of deliberation would be considered open and transparent. Modern government is not about that. As far as possible, we have competitions. Defining criteria, eligibility and so on would be important to that process, which must be measured in some manner or other.

For example, just because I have the required skills and experience for my post as Commissioner for Public Appointments, it does not mean that I could be the commissioner for parliamentary standards. However, there is no reason why, when advertising for the post, one could not look for people like me, like the ombudsman or like various other people who work part time.

The Chairperson:

That clarifies things.

Ms Huston:

It is not unusual for someone perform more than one role. On the other hand, the post need not be filled by only one person. One might consider an office of commissioners for parliamentary standards that would stretch across Executive and legislative sections of our Government. The Scottish Parliament is working more and more towards bringing those roles together. Among the models it considered was the appointment of three or four commissioners to fulfil the various functions. In the past, the Public Administration Select Committee considered including the roles in a single office, so a collection of part-time commissioners would be looked after efficiently through a single administrative office.

The Chairperson:

You said that you might be able to provide an oversight role in the appointment process. We appreciate that offer. What would that involve?

Ms Huston:

Setting aside the peculiarity that my job is to regulate appointments made by Ministers and this appointment will be made by the Assembly, my oversight could involve some sort of independent involvement in the panel, for instance, advice on how the appointment process should be run.

Departments often discuss matters with me, such as the proposed criteria for a new body or organisation, so I may be able to help with those sort of issues. My code of practice, which is a set of guidelines and principles by which all appointments should be made by Ministers, could be used in the process.

The Chairperson:

I would like to clarify a matter that has, to some extent, already been covered. You have said that a commissioner's freedom from the direction or control of the Assembly should be set out in statute. You have talked about the commissioner having clear, statutory powers to enforce his or her findings. There is then the difficulty or tension between that statement and the role of the Assembly as a whole, MLAs in general and this Committee. How would that balance be struck? Where would the cards ultimately lie? What authority and independence would the commissioner have vis-à-vis that of the Assembly or any part of it?

Ms Huston:

There is no perfect answer to that. A single-term appointment would lend authority and independence to the commissioner. It would also give the commissioner an opportunity to carve out his or her place, clear in the knowledge that no one is looking over his or her shoulder.

I am not sure of the answer. If it were not for the environment nationally with regard to the political class, as they would refer to it, and all that has been going on, one would say that the commissioner could work closely with the Committee, and that would be fine. However, I do not believe that the populace at large would be terribly happy about that. The electorate believes that separation is needed. I am not sure what would be the best way to do that.

I would say that there is a need for the commissioner to be able to enforce decisions and sanctions, etc, because I am aware that I do not have that in my post. That undermines my position constantly. I compare my position with that of the Scottish commissioner, who has powers that help to reinforce her position, independence, et cetera. When I say to people who are interested in public appointments or who have an issue with one that I can do nothing but point out that, indeed, something was not done properly, they do not think much of that. It is frustrating. Therefore, you do not want to set up a commissioner in the Assembly who will be in a similar situation.

The Chairperson:

Thank you very much indeed, Felicity. Your evidence is especially useful. I should have said to Tom and John earlier that we are, of course, in open session. Therefore, you are perfectly free to remain and listen to the rest of the meeting if you wish. Thank you for what you have done.

The third evidence session is with Mr Jeff Cuthbert AM, who is Chairperson of the Committee on Standards of Conduct in the National Assembly for Wales and Mr John Grimes, who is the Clerk to that Committee. I welcome you. Thank you very much for taking the considerable trouble to travel from Cardiff.

The National Assembly for Wales is in the process of implementing proposals similar to those that we are currently considering, although it is considerably further down the line with them. The Committee on Standards of Conduct has brought forward a commissioner for standards measure. For that reason, it is particularly helpful for us to hear about its experiences.

I noticed that among your various responsibilities in the Welsh Assembly, Jeff, you are chairperson of the cross-party healthy living group and co-chairperson of the cross-party beer and pub group. That indicates good, balanced judgement. Therefore, for that reason also, we look forward to hearing your evidence. I invite you to brief the Committee.

Mr Jeff Cuthbert (Committee on Standards of Conduct, National Assembly for Wales):

Thank you very much indeed, Chairman. I try to keep those all-party informal group responsibilities — certainly, the latter one on beer and pubs — separate from my formal duties.

I am delighted to be here. Mr John Grimes is Clerk to the Committee on Standards of Conduct. In fairness to him, I should point out that he was not the Committee Clerk at the time when that work was undertaken. Nevertheless, he has familiarised himself fully with procedures, and he will certainly deal with any questions of a more structural or constitutional nature.

I am very pleased to be here. It is my first visit to the Northern Ireland Assembly, and, indeed — I am ashamed to say it, for someone of my age — it is my first visit to Northern Ireland. Therefore, I am doubly delighted to be here. I hope that you find my visit useful.

By way of introduction, it might be useful for me to say that we will do our best to answer any

questions that you have. A little while ago, you received a paper from us, which I trust was beneficial to your work. My senior researcher, Alex Still, is with me. If there are any issues that we cannot address adequately today, we will ensure that we send your Committee Clerk that information in due course.

As you said, Chairman, I chair the Standards of Conduct Committee in the National Assembly for Wales. It is a much smaller Committee than this one. It used to be around the same size. Since the Government of Wales Act 2006 came into force, we have become a much smaller Committee of just four members; one from each party in the Assembly. Therefore, we are not party-balanced in that sense. I represent the Labour Party on that Committee, and I have the honour of being its chairperson.

The perceived main function of the Standards Committee is to consider complaints that the current standards commissioner has upheld as having some merit. It must then decide whether it agrees with the commissioner's decision and, on that basis, whether to issue a penalty or to dismiss the case as being minor. I am pleased to say that, for the past 17 to 18 months, the standards commissioner has not seen it necessary to refer any such complaints to us, which shows how well behaved the Members of the National Assembly for Wales are, but that is not to say that we have been idle — certainly not. The work that we have done on that measure shows that we have been extremely busy. Indeed, we are considering other issues, such as protocols on the recording of information on family members who are employed by Members and the recording of other employment that Assembly Members may have. We, therefore, have a broader remit than simply dealing with disciplinary cases.

I wish to summarise some of the key points from the written information that we sent. We decided that the post of the commissioner should have a statutory basis, mainly to ensure that there will be true independence from the National Assembly, so that that person can act completely objectively in investigating any complaints and that the public can, therefore, have full confidence in the deliberations of whoever the statutory commissioner may be. Although that work was in hand before the unfortunate incidents in another place, those incidents have certainly given extra impetus to our work and given us greater assurance that we have done the right thing.

One of the key differences between the statutory commissioner, once appointed, and the existing voluntary commissioner is that the statutory commissioner will have authority to compel

witnesses to appear at hearings and to require that documentary evidence is produced. At the moment, such things are more or less voluntary. However, I am sure that the current standards commissioner has not had any difficulty in getting the co-operation of Members or those who complain about the conduct of Members. The statutory commissioner will also have a responsibility to advise on the code of conduct, especially if he is requested to do so by the National Assembly.

What is explicitly excluded from the duties of the standards commissioner — I was pleased to have heard the earlier evidence sessions — is responsibility for any aspects of the ministerial code. That does not mean that Assembly Members who are appointed as Ministers will escape his or her attention. However, the commissioner must make it clear that the complaints that are being made relate to the conduct of that person as an Assembly Member; for example, a complaint concerning a relationship with a constituent or expenditure on a constituency office. Issues that relate to the function of that Assembly Member as a Minister remain within the ambit of the First Minister under the ministerial code. That appears explicitly in our measure.

We believe very much that the post of the standards commissioner should not be a full-time one. The current standards commissioner works, on average, four days a month, and, over the past couple of years, he has incurred costs of about £20,000 per annum to operate his post. In addition to that, the cost of in-kind support from other Assembly staff has worked out at about £10,000 to £11,000 per annum.

Finally, at this point, I wish to make it absolutely clear — this was quite an important part of our deliberations — that, although we want to give as much power and authority as we can to the standards commissioner, it is not the job of the standards commissioner to initiate complaints.

The Commissioner for Standards must receive complaints, but we recognise that, during the investigation of complaints, matters may arise that could involve other Assembly Members. In such circumstances, the duty of the commissioner is to refer the matter to the Clerk to the Assembly, who is the chief accounting officer, to investigate and decide whether there is anything to refer back to the commissioner for further investigation. That is quite an important principle to enshrine in our measure. We are also very proud of the measure, because it is the first Committee-driven one that has been approved by the National Assembly for Wales.

Mr Ross:

Welcome to the Assembly and to Northern Ireland. The Committee has visited the Scottish Assembly and Westminster; Wales is the only part of the UK that we have not gained first-hand knowledge of with regard to the issue of standards. Will you explain how members of the public make a complaint? Do they make a complaint to the Committee Clerk, or do they make it directly to the Commissioner for Standards?

Mr Cuthbert:

Members of the public make their complaints directly to the Commissioner for Standards; they can appeal to him or her without having to go through any other officer of the National Assembly.

Mr Ross:

You said that you have not been handed any matter by your commissioner for 17 months. If the commissioner determines that no action is required or that the complaint has no basis for investigation, does it not come to you at all?

Mr Cuthbert:

No, it does not. We have just received an annual report from the current commissioner, in which he was able to inform us that there were quite a number of complaints that he had received and investigated, but had not felt it necessary to pass any of them to the Committee for Standards.

Between March 2005 and 31 December 2009, 39 complaints were received and investigated by the commissioner. Two of those are still undergoing examination and may be brought to our attention. Unfortunately, there was a recent occurrence that may result in a complaint; I would not be surprised if it did. Thirty of the complaints were ruled inadmissible, and one was discontinued because no further evidence was provided by the complainant. Three complaints were dealt with swiftly: they were of a minor nature and the Assembly Member apologised for and rectified his or her error. Three complaints were referred to the Standards Committee, but that was in the earlier part of the period.

Mr Ross:

Many of the complaints that our Committee Clerk has received have originated from media reports; someone has read something in a newspaper and decided to make a complaint. What experience have you had of that in your Assembly, and how does the commissioner deal with

such cases, given that the only evidence is a newspaper article?

Mr Cuthbert:

That is a difficult question for me to answer, because I am not party to the complaints that the Standards Commissioner chooses not to forward to us. There have been examples of articles in newspapers that have led to some complaints. However, the Standards Commissioner tries to ensure that there is substance to the complaints and that they are not due to journalistic license. Therefore, hard evidence is required by the commissioner before he proceeds with any complaints.

Mr Ross:

Under the current system, the complaints go directly to the Interim Assembly Commissioner for Standards. If the Committee comes across a newspaper article about a particular big story, like we have had here recently, does it have the power to initiate an investigation?

Mr Cuthbert:

No. Anyone in Wales, including Assembly Members, can initiate a complaint. That also includes the four Assembly Members who are on our Committee, but, of course, if they initiated a complaint, they could not serve on the Standards Committee for the duration of the consideration of that complaint.

Mr Ross:

What if it is not a complaint as such, but you believe that it is in the public interest to have an investigation on something? Would that have to come from an individual Member?

Mr Cuthbert:

In your experience, Mr Grimes, what do you think is the right response?

Mr John Grimes (National Assembly for Wales):

If something happened that was of concern to Members, it would be raised as a complaint by Members other than those on the Standards Committee. If there was a feeling that there was something to be looked at, the matter would end up with the Standards Commissioner one way or another. It would not involve the Committee as such.

Mr Cuthbert:

From memory, very few, if any, complaints have been initiated by Assembly Members.

Mr Ross:

You mentioned how your Standards Commissioner has the powers to compel people to give evidence. Our interim commissioner cannot do that currently, but this Committee has the power to do that. Does your Committee have the power to compel Members to give evidence to you or your commissioner? Does the commissioner have difficulty in getting them to do so?

Mr Cuthbert:

Under the Government of Wales Act 1998, I am pretty sure that Committees — certainly scrutiny Committees — have the power to compel. I am not sure whether that is the case for the Standards Committee because that is established under a different Standing Order, and because of our relationship with the Standards Commission. I qualify all of my remarks by saying that that person is not in post yet, so we do not have any experience of any difficulty to draw upon. However, I am not sure whether the Standards Committee could compel someone to appear separately from an investigation of the Standards Commissioner.

Mr Grimes:

The powers that we have relate to functions that are exercised by Ministers and devolved functions, so I am not sure whether that would read across to the way in which Members behave, and standards issues. That is probably one of the reasons why it is important to have that in the measure to clarify that issue.

Rev Dr Robert Coulter:

Thank you for coming to the Committee today and for your help. What sanctions can be applied to Members who are found to have breached the code? Who determines what those sanctions should be?

Mr Cuthbert:

I am sure that Mr Grimes will assist me in this regard. Once a report is received by the Standards Commissioner that a complaint has been upheld, the Committee receives that as evidence and can then make a decision to recommend one of a number of actions. It could decide that no breach has been found, and that the complaint should be dismissed. It could decide that a breach has

been found, but that it is a failure of a minor nature and that the complaint should be dismissed. It could decide that a breach has been found and that no further action should be taken.

The Committee could, however, decide that a breach has been found and that the Member should be censured under Standing Order 16. Perhaps we could make available that Standing Order. Furthermore, it could decide that a breach has been found and that the Member should be excluded from Assembly proceedings for a specified time, which is the most serious outcome. That specified time would be a matter for further consideration. If excluded, the Member concerned would not be entitled to draw salary and allowances.

Rev Dr Robert Coulter:

That was the question that I was going to ask.

Mr Cuthbert:

I think that I am correct.

Mr Leonard:

It is good to see you. You are very welcome. If I have picked up anything wrong, please correct me. I am interested in a couple of the tensions that seem to be around. I do not mean that in a negative way; we have to resolve the same tensions between where the Committee finishes and where the Assembly, per se, comes in.

You said that its statutory nature gives the Committee independence, and in your submission you stated that the Committee:

“Must report to the Assembly on the outcome of...investigation”.

Is that information filtered through the Committee on behalf of the Assembly, and what is the relationship between the Committee and the officer concerned? Furthermore, on the issue of dismissing without investigation, are the reasons for dismissal fed back into the system?

Mr Cuthbert:

When you say dismissal, do you mean of the report?

Mr Leonard:

Yes. I am referring to the Committee's:

“ability to dismiss the complaint without reporting.”

You detailed that in your submission under paragraph 10, which deals with the investigation of complaints.

Is a report sent back to the Assembly to advise under what grounds the complaint was dismissed? Where do the responsibilities lie among the officer, the Committee and the Assembly overall?

Mr Cuthbert:

John, can you comment on that?

Mr Grimes:

The commissioner reports to the Committee.

Mr Leonard:

Therefore, the report is not made to the Assembly, but to the Committee?

Mr Cuthbert:

Yes.

Mr Leonard:

And the Committee acts on behalf of the Assembly?

Mr Cuthbert:

Yes, but as it says in the Committee's recommendations in clause 7(1)(2), as soon as may be following its decision, but not sooner than 10 working days after providing the Member complained of with a copy of the Committee's report, the Committee will publish the report of its consideration and lay it before the Assembly along with the commissioner's report to the Committee.

Mr Leonard:

OK. I was just trying to establish the sequence. Are the reasons for dismissing the complaint without a report given to the Assembly?

Mr Cuthbert:

Not other than statistically. In those circumstances, the commissioner does not need to report to the Committee except to recommend any action that may be needed to clarify or interpret rules for future reference. Therefore, it is the lessons that were learned, rather than the specific complaint, that is reported on.

Mr T Clarke:

It seems to me that the complaint is left to the commissioner for reasons of independence, and, for that reason, it is not necessary to report back for the Committee to reopen that investigation. Is that correct?

Mr Cuthbert:

Yes, the Committee does not reopen the investigation. However, it is required by Standing Orders to receive the commissioner's findings and decide whether it agrees with them. If the Committee wishes, it can also call the Member before it to ask him or her questions and can receive other evidence and then come to a decision. As I said earlier, that may be that the Committee does not agree with the commissioner's decision and, therefore, take no further action, or that it does agree, which means that it will then decide on a course of action depending on the nature of the offence.

Mr T Clarke:

If the commissioner makes the suggestion that no further action is required and the Committee disagrees with that position, what do you do?

Mr Cuthbert:

Do you mean in the event that the complaint is not upheld?

Mr T Clarke:

Yes.

Mr Cuthbert:

In that case it would not come to us. At that point it ends.

Mr T Clarke:

Therefore, the Committee does not have the ability to re-examine the complaint, or disagree with the commissioner, because it must accept the determination?

Mr Cuthbert:

Yes, and, strictly speaking, the Committee is not aware of the issue itself.

Mr T Clarke:

Rev Dr Coulter raised a point earlier and you said that one of the powers that the Committee has is to expel a Member for a period of time.

Mr Cuthbert:

Exclude.

Mr T Clarke:

Sorry, exclude, and they would lose their pay and allowances for that period. What allowances would that Member lose? The loss of his or her office cost allowance could have also have an impact on their staff.

Mr Cuthbert:

We will check that and get back to you with clarity on that question.

Mr Bresland:

If a Member is found to be in breach of the code, has he the right to appeal?

Mr Cuthbert:

Yes. The procedure contains a right to appeal. The Member found has to appeal to the Presiding Officer within 10 working days of having received the decision. Should such an appeal be lodged, the Presiding Officer must appoint a further committee, an Appeals Committee, consisting of four Assembly Members who must not have been connected in any way with the original hearing, to consider the appeal. The Appeals Committee cannot reopen the case, but can decide whether there have been serious inaccuracies or major pieces of evidence not considered that were pertinent to the case, or whether due process has not been followed.

The Chairperson:

From what you have said, I have a fair idea of what your answer to this question will be. However, I should ask whether any media comment is made when an investigation is being carried out to the effect that a complaint has been made and is being investigated, or is any other comment to the media made?

Mr Cuthbert:

If you are asking whether there may be leaks from time to time, the answer is yes. However, we do not issue statements until matters are resolved.

The Chairperson:

Can I ask about resources? You referred to the costs to date. Under the new scheme, how will the office be resourced and how does that relate to the independence of the office?

Mr Cuthbert:

I will invite John to contribute to answering that question in a moment. Essentially, we do not envisage that the post will be a full-time one. We do not rule that out, but it is extremely unlikely that that will be necessary. Working on the basis of current practice, we anticipate that it will take four or five days a month. The cost, as I mentioned, may be £20,000 per annum.

We envisage that support will be drawn from other offices paid through the Consolidated Fund, which is a central fund for these matters in Wales, such as the offices of the Ombudsman and the Auditor General.

Mr Grimes:

I think that Jeff mentioned earlier that the commissioner currently costs around £23,000 a year. The remuneration of the new commissioner will be met directly from the Consolidated Fund in the future. That is based on the assumption that there is no significant increase in the level of business. However, we really do not know that that will be so.

The Chairperson:

When you say that that cost will be met out of the Consolidated Fund, it has to go through some mechanism. Does it come through a Minister or a Department?

Mr Grimes:

The measure provides that it is a call on the Welsh Consolidated Fund, so there is no Budget motion required. The cost of staff to support the commissioner, is currently about £10,000, plus accommodation costs of £3,000. At present, the staff are Assembly staff. Those costs could be met from the Consolidated Fund. However, as you have discussed already today, it is probably too small to be significant, so the measure provides that the Assembly Commission will provide that funding. It will then appear in the Assembly Commission's Budget motion. Whether the commissioner handles his staff directly or uses another office, such as that of the ombudsman, is to be decided in the future.

Mr Ross:

One of the problems we have had in this Committee since the restoration of devolution is that it tends to split down party lines. If that is not the reality, it is the perception. If we do not split down party lines, we may split down unionist/nationalist lines. That is one of the most difficult things that members have had to come to terms with. We will have to get around that.

Do you think that, by adopting your set-up of having an individual from each party, irrespective of party strength, we will get around that issue? Might it mean in some cases that all the other parties will gang up on one? All the other parties may want to stick the boot into the Government parties.

Mr Cuthbert:

I understand the political realities. The work of the Committee on Standards of Conduct is provided by four Members. We do not have a scrutiny role as such, and we do not hold Ministers to account, so the need for party balance is not so necessary. However, before the Government of Wales Act 2006 came into force, it was felt that, because the Committee was much larger than it is now, some members of the Committee had a tendency towards tribal loyalties to their parties. I have no doubt that that happened, because I sat on the Committee at that stage. There is no hard evidence to show that that happened, but I am sure that that was the case.

I must say that the four members of the current structure, regardless of whether that be the Labour Party, the Conservative Party, Plaid Cymru — the Welsh nationalist party — or the Liberal Democrats, act objectively. They put party loyalties to one side because there is no argument to be won. However, there is also a practical reason for that. The Assembly comprises

just 60 Members, and the demands on their time from scrutiny Committees and other Assembly Committees, which are much larger than ours, mean that we must give — we have done this — serious consideration to how we allocate Members' work.

The Chairperson:

There are no further questions. I neglected to thank you for the evidence that you sent in advance. It was substantial and extremely pertinent to our work. This witness session has also been extremely useful to us, so thank you very much. We hope that you enjoy the rest of your stay in Northern Ireland. You are welcome here on any occasion.

Mr Cuthbert:

Thank you very much indeed. It has been a pleasure to be here.