



Northern Ireland
Assembly

Working Group on an Unacceptable Behaviours Policy

Report on the development of an Unacceptable Behaviours Policy

03 March 2022

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List of Abbreviations and Acronyms used in this Report

DPA: Data Protection Act 2011

HoC: House of Commons

HoL: House of Lords

ICGS: Independent Complaints and Grievance Scheme

IIS: Independent investigation service

LRA: Labour Relations Agency

MLA: Member of the Legislative Assembly

NDNA: New Decade New Approach

RaISe: Research and Information Service

Background

1. At its meeting on 30 May 2018, the Assembly Commission agreed that a review should be undertaken of the current procedures for dealing with complaints of inappropriate behaviour involving Members, Members' staff, Party staff and Assembly Commission employees and that this review should inform the development of an Inappropriate Behaviours Policy – now retitled the Unacceptable Behaviours Policy ('the Policy').
2. In approving this work, the Assembly Commission was mindful of the many reports in the media in the early part of 2018 in which people, mainly women, had experienced various forms of inappropriate behaviour in their work environment, including bullying and harassment and inappropriate sexual behaviour.
3. While initial background work on the issue was taken forward by Commission officials, given the cross-cutting subject matter, development of the Policy could not progress in the absence of the Committee on Standards and Privileges ('the Committee') and operation of full Assembly business.
4. In November 2020, the Speaker (as Chairperson of the Assembly Commission) and the Committee agreed to form a working group, comprising members of the Assembly Commission and members of the Committee, to take forward development of the Policy. Following consultation with the Chief Whips of the five main parties in the Assembly, the membership of the Working Group ('the Group') was confirmed as follows:
 - Mr John Blair (Working Group Chairperson and Assembly Commission member)
 - Mr Robbie Butler (Assembly Commission member)
 - Mrs Pam Cameron MLA (Committee member)
 - Ms Linda Dillon MLA (Committee Chairperson)¹
 - Mrs Dolores Kelly MLA (Assembly Commission member)

¹ On 3 December 2021 Ms Linda Dillon MLA replaced Ms Sinéad Ennis MLA as a member of the Group in consequence of Ms Dillon replacing Ms Ennis as Chairperson of the Committee on Standards and Privileges.

5. The first meeting of the Group took place on 15 April 2021 and subsequent meetings were held on 24 June 2021, 27 January 2022 and 3 March 2022. The minutes of the Group meetings are included at **Appendix 1**.
6. As part of its work, the Group has reviewed the applicable codes, procedures and processes to identify necessary improvements which take account of the sensitive nature of complaints under the Policy. This work necessitated an examination of the wider policy and legal context within which the Policy will sit. The Group's deliberations on the related issues and options, together with its conclusions and recommendations, have been informed by comparative research on developments in other legislatures, policy and legal advice, and an oral briefing from the Commissioner for Standards ('the Commissioner'). In addition, prior to the Group agreeing this report on 3 March 2022, the Group members undertook to consult within their respective political parties on the key issues/options and the provisions of the draft Policy. Formal responses were received from two of the Group members (attached at **Appendix 2**) in this regard and other members conveyed their party positions informally to the Secretariat and/or during meetings of the Group.
7. The draft Policy is included at the **Annex** to this report and the comparative research papers, prepared by the Assembly Research and Information Service (RaISe), which have informed the policy approach, are included at **Appendix 3**.
8. This report, together with the draft Policy, is presented to the Committee and to the Assembly Commission for consideration and action as applicable.

Policy purpose and scope

9. The draft Policy has been developed for the purpose of providing a consistent message to everyone working for or within the Assembly in relation to standards of behaviour and, in particular, the unacceptable behaviours which will not be tolerated, whether by the Assembly as an institution, by the Assembly Commission as an employer, by MLAs as employers or by political parties as employers. The draft Policy includes clear descriptions of the range of unacceptable behaviours covered, including bullying, harassment, sexual harassment and victimisation. It also sets out how complaints may be raised and provides for applicable investigative and adjudication processes, which take account of the sensitive nature of complaints under the Policy.
10. Given the intended purpose and having considered the approaches taken by comparator legislatures, the Group considers that the scope of the Policy should include the management and investigation of complaints (that fall under the definition of unacceptable behaviour as set out in the Policy) by MLAs; their employees; Party staff; Assembly Commission staff (deemed to include agency workers, inward secondees and contractors); and members of the public in relation to matters arising during Assembly business. As regards an MLA, 'Assembly business' includes any activity in which they are participating/acting in their capacity as an MLA, whether this activity occurs in Parliament Buildings, at a constituency office, or elsewhere.
11. As explained below, the draft Policy makes clear that its scope does not include: complaints which are considered frivolous or vexatious or otherwise an abuse of the complaints process; and complaints relating to the service or performance standards or outcomes received (i.e. advice) from Members or their staff, including in a constituency office setting.
12. The Group has identified changes which may need to be made to the MLA Code of Conduct² ('the Code of Conduct') to reflect the scope of the Policy. In addition, it is noted that the inclusion of complaints by Assembly Commission

² <http://www.niassembly.gov.uk/your-mlas/code-of-conduct/the-code-of-conduct-and-the-guide-to-the-rules-as-amended-on-23-march-2021/>

staff within the scope of the Policy will essentially remove the need for the existing Staff/Member Protocol.

Policy principles

13. The Group identified the following general principles for the Policy, which reflect good practice:
 - The Policy should include a clear commitment that unacceptable behaviour will not be tolerated and encourage those who feel they are subject to unacceptable behaviour to raise a complaint, either informally or formally;
 - The Policy should facilitate a complaint against a Member, Members' staff and Party Staff;
 - The current Assembly Secretariat Staff/Member Protocol should be subsumed into the Policy, therefore facilitating the consideration of a complaint by a Member, Members' staff or Party staff against Assembly Commission staff (which is deemed to include agency workers and inward secondees);
 - For those persons covered by the scope of the Policy, it should apply to behaviours within Parliament Buildings, at constituency offices or other places of work and in the course of Assembly duties and activities, e.g. UK or overseas travel;
 - The Policy should include definitions and examples of inappropriate behaviour (which will include bullying, harassment, sexual harassment and victimisation);
 - The Policy should reflect and comply with all relevant legislation;
 - The Policy should include informal procedures to resolve an issue, including mediation, as well as formal procedures for making a complaint and having that complaint investigated;

- The Policy should signpost/provide sources of help and support available to complainants and those subject to a complaint;
 - The Policy should emphasise the importance of confidentiality;
 - The Policy should include a timeframe for raising complaints;
 - The Policy should include an appeal or review mechanism for the complainant in line with good practice and the principles of natural justice.
14. While seeking to develop a Policy which reflects the abovementioned principles, the Group has been mindful of the need to ensure that the associated complaints handling procedures and processes align with the existing statutory framework. This required consideration of a range of issues and options as outlined below.

Issues and options considered

15. This section sets out the main issues and related options which were examined by the Group during the policy development process.

Unfair and vexatious complaints

16. At the meeting on 27 January 2022, Group members noted concern regarding the potential for unfair or vexatious complaints against constituency office staff in particular, for example if a complainant has been unhappy with advice provided to them. As alluded to above, to address this concern, the Policy makes clear that: complaints which are considered frivolous or vexatious or otherwise an abuse of the complaints process will not be investigated; and that complaints relating to service or performance standards or outcomes received (i.e. advice) of Members or their staff, including in a constituency office setting, may not be submitted under the Policy. This broadly reflects the approach taken

in the Code of Conduct for Members and the related 'General Procedures Direction'³ which sets out, inter alia, the admissibility criteria for complaints against Members.

Complaints timeframe

17. The Group considered whether complaints may be considered under the Policy, relating to incidents which pre-date the implementation of the Policy; and if there should be a time limit for submission of complaints under the Policy. Having taken legal advice, the Group also considered: how to address the position where the standards at the time were significantly different from that contained within the Policy; the need for transitional provision once the Policy has been introduced; and discretion to extend the time limit to bring a complaint where it is equitable to do so.
18. The Group considered that it is preferable to attempt to resolve an issue/complaint as soon as possible and, therefore, the draft Policy includes a time limit within which a complaint should be raised. For complaints relating to issues/allegations arising after the Policy is introduced, the draft Policy states that, in most cases, a delay of more than 6 months in making a complaint will not be regarded as reasonable. This 6-month period is from the date of the alleged behaviour, or from the most recent incident if the complaint relates to a series of behaviours. The draft Policy includes flexibility to accept a complaint outside of this time limit in extenuating circumstances, for example if there have been attempts to resolve the matter directly between the parties before submitting the complaint under the Policy.
19. It is likely that the type of behaviours that would be raised under the Policy would not be significantly different than those which were in place previously (the Code of Conduct; the Assembly Commission's Behaviour Code; and the Assembly Secretariat Staff/Member Protocol). A transitional provision is included in the draft Policy to enable an individual to raise a historical complaint

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

regarding an alleged behaviour/incident that occurred before the Policy was in place, where that behaviour/incident is deemed to fall within the definition of unacceptable behaviour as set out in the Policy, and the matter has not previously been subject to formal investigation. In considering such complaints, the prevailing policies in force at the time of the alleged behaviour/incident would be taken into account. It is proposed that this transitional provision will be in place for 6 months from the date of issue of the Policy. After this 6-month period, it is proposed that historical complaints should not be accepted.

Behaviour Code and Conduct for Members

20. The Assembly Commission recently agreed and published a Behaviour Code⁴ and the provisions of this Behaviour Code and MLA Code of Conduct, are referenced in the draft Policy.
21. The Group's legal advice made clear that the Behaviour Code is a policy of the Assembly Commission and would fall under the ambit of Rule 10 of the Code of Conduct as a policy 'issued by the Assembly Commission' and 'with its authority'.⁵
22. Further legal advice was sought on whether the Behaviour Code, in falling under the ambit of Rule 10, effectively sets different (e.g. higher or inconsistent) standards of acceptable conduct than that set out in Rule 15 of the Code of Conduct and which was agreed by the Assembly (the Behaviour Code is drafted in broad terms and, for example, refers to showing respect, acting professionally, displaying integrity, courtesy and mutual respect; whereas Rule 15 requires that Members do not subject anyone to 'unreasonable and excessive personal attack'). The Committee has previously set a fairly high bar for a breach of Rule 15 (and the Code of Conduct makes clear that it 'upholds Members' right to freedom of expression'). Also, given that the Behaviour Code

⁴ <http://www.niassembly.gov.uk/about-the-assembly/corporate-information/policies/behaviour-code/>

⁵ <http://www.niassembly.gov.uk/your-mlas/code-of-conduct/the-code-of-conduct-and-the-guide-to-the-rules-as-amended-on-23-march-2021/#THE-RULES-OF-CONDUCT>

is framed in broad, principle-based terms, this would appear to depart from the position of the Committee in its 2015 Review of the Code of Conduct, which separated aspirational principles from enforceable rules of conduct.⁶

On considering further legal advice, the Group noted that the broad, principle-based approach in the Behaviour Code may make it hard to determine the exact scope of behaviour that may constitute a breach of the Code of Conduct. To resolve this issue, the Group would suggest to the Committee that the Code of Conduct is amended to make clear that the Behaviour Code is a Principle of Conduct that is not actionable under the rules of the Code of Conduct. In line with this suggested approach, it is made clear in the draft Policy that it is the Policy (in terms of the unacceptable behaviours as defined therein) that is enforceable in regard to Members, as opposed to the Behaviour Code. Also, the Group would further suggest to the Committee that, in order to highlight in the Code of Conduct the importance of the Policy, Rule 10 is amended to provide that Members will be expected to comply with the Policy. A draft Code of Conduct reflecting these suggested amendments is included at **Appendix 4**, with changes highlighted in red.

Informal resolution of complaints

23. The draft Policy has been developed to encourage complainants, in the first instance, to use the informal approach to resolve their complaint. It is proposed that a complainant will not have the automatic right to demand a formal investigation into their complaint where the matter complained of is minor in nature. Similarly, if the complainant has indicated that they are willing to resolve their complaint informally, but the allegation is of a very serious nature, the decision may be taken to move immediately to formal investigation.
24. The informal approach in the Policy includes the offer of mediation to the parties. As regards complaints against Assembly Commission staff, MLA staff and Party staff, it is anticipated that these will be managed in accordance with the applicable employer's policies and procedures, including consideration of

⁶ <http://www.niassembly.gov.uk/globalassets/documents/standards-and-privileges-2011-2016/report/review-of-code-of-conduct.pdf>

informal and formal action (and appeal mechanisms). In terms of complaints against Members, the Group examined the potential to widen the 'Rectification Procedure' provided for in paragraph 9 of the General Procedures Direction and Standing Order 69c, to include less serious complaints against Members under the Policy.⁷

25. Having taken advice, the Group noted that there would be no legal impediment to amending the General Procedures Direction and standing orders in order to widen the scope of the rectification procedure to apply to matters other than the registration and declaration of interests. The Group noted that there is equivalent provision in Westminster, where a rectification process 'to restore and maintain working relationships' could include (but is not limited to) to an apology, behaviour agreement and compulsory training.
26. The Group considered whether, in the Assembly context, the rectification procedure could be amended to enable minor breaches of the Policy to be resolved informally by the Commissioner without the involvement of the Committee/Assembly. It was noted that this approach, whereby the Commissioner would be the decision maker and the details of individual cases resolved informally would not be published/made public, may facilitate complaints to be made under the Policy (given the potentially sensitive nature of the issues involved).
27. However, the Group's legal advice makes clear that, under the current legislation, the Commissioner is obliged to report to the Assembly on the outcome of investigations of alleged breaches of the Code of Conduct/Policy and the Committee is required to consider such reports. Also, while the procedures could be amended to enable the Commissioner to recommend the use of the rectification procedure in relation to minor breaches of the Policy (and to all minor breaches of the Code of Conduct), under Standing Order 69A(2), the Committee retains the role of ultimate decision maker as to whether the matter is suitable for rectification. It was also noted that any report made by the

⁷ <http://www.niassembly.gov.uk/assembly-business/committees/2017-2022/standards-and-privileges/direction-on-general-procedures/#rectification> ;
<http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders-5-july-2021/#a69c>

Commissioner may not include any specific recommendation for the imposition of a sanction, but may otherwise make such recommendations as the Commissioner thinks fit. The Group noted, however, that the statutory requirement to report the outcome of any investigation only requires that a report is made and that it is made in writing. In light of the foregoing, the Commissioner could meet these requirements by providing correspondence informing the Committee that the matter has been considered to be suitable for rectification which could be noted by the Committee/Assembly.

28. The Group, therefore, recommends to the Committee that the necessary procedural amendments are taken forward to widen the scope of the rectification procedure as outlined above and to specify the format of correspondence from the Commissioner to the Committee on minor breaches of the Policy by Members, which are deemed to be suitable for rectification.

In the meantime, the draft Policy provides for the rectification procedure forming part of the informal approach and for the Commissioner to determine whether a complaint against a Member is minor and, if so, recommend to the Committee that the rectification procedure be used in such circumstances. Inclusion of this provision is dependent on necessary changes being made to the General Procedures Direction and standing orders.

Investigation of complaints

29. Complaints made under the Policy may require formal investigation into the conduct of MLAs, their staff, Party staff or Assembly Commission staff.
30. The Group has previously considered the approaches established in the other legislatures in relation to complaints regarding bullying and harassment (including sexual harassment). The House of Commons (HoC) has established an independent investigation service (IIS) to conduct all investigations, with the investigation report issuing to appropriate recipients. In Scotland, while an IIS has also been established, investigations involving MSPs are conducted by the Ethical Standards Commissioner.

31. The Assembly Commissioner is empowered to conduct investigations into admissible complaints involving MLAs (and Ministers). The Commissioner's role is established in legislation. There is currently no provision permitting the Commissioner to carry out investigations under the Policy that are not against an MLA. However, in principle the functions of the Commissioner could be expanded to include investigations under the Policy, by amendment to the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 ('the 2011 Act').⁸ Another approach could be to use the mechanism in section 17(2)(b) of the 2011 Act where standing orders can specify matters which must be investigated by the Commissioner. It is noted that it would be important to ensure that there is a clear legal basis for any expansion of the remit of the Commissioner, so the first approach would be preferable. The advice also noted there would need to be significant amendment to the General Procedures Direction to accommodate any change to the scope of the Commissioner's role. The power to investigate complaints referred by the Committee which fall under the Policy could be achieved through a general direction from the Committee to the Commissioner.
32. In relation to complaints against MLAs, the Group noted that there was currently limited scope for the Commissioner to delegate responsibility for investigating complaints against MLAs, for example to an independent investigation service. The Commissioner has also expressed a view that the role of investigating complaints against MLAs under the Policy should be retained by the Commissioner. The Group also noted that having investigations completed by the Commissioner offers assurance on the quality and consistency of investigations of complaints under the Policy. Should the Commissioner consider it necessary to seek additional resources (for example to address a high volume of complaints), the Group is satisfied that Schedule 4 to the 2011 Act enables a certain degree of delegation in terms of persons working directly under the authority, direction and control of the Commissioner. This could include buying in additional support for investigations albeit the investigation would need to remain under the direction and control of the Commissioner.

⁸ <https://www.legislation.gov.uk/nia/2011/17/contents>

33. In order to provide for a central point of delivery, the draft Policy has been developed to reflect that all complaints under the Policy will be received in the first instance by the Commissioner. The draft Policy proposes that investigation into complaints against MLAs will be taken forward by the Commissioner. It is proposed that complaints against Assembly Commission staff, Party staff and MLA staff will be referred to the relevant employer who will have responsibility for ensuring that an investigation is carried out, as appropriate, under the employer's policies and procedures. Complaints against MLA staff will therefore be referred to the employing MLA; complaints against Assembly Commission staff referred to the Assembly Commission; and complaints against Party staff referred to the relevant Party. The Group considered that this approach provides equality of treatment to these three categories of staff. The Group noted that Parties and MLAs, as employers, will need to have appropriate policies and procedures in place to manage complaints under the Policy, in relation to investigations, consideration of investigation reports and appeals (in terms of investigations, it is noted that the Labour Relations Agency provides an *Advisory Guide on Conducting Employment Investigations*, which may be of assistance in relation to investigations under the Policy⁹).
34. In relation to complaints against MLA staff, the Group also considered the following investigation options:
- Investigations into complaints against MLA staff would be investigated by the Commissioner and the investigation report forwarded to the employing MLA for consideration and appropriate action;
 - Forwarding the complaint to the relevant MLA (as the employer) and requesting that they appoint an independent investigator (to assist the MLA, a list of independent investigators would be provided, such a list is normally available from the Labour Relations Agency (LRA)); or
 - Procuring an IIS to conduct all investigations into complaints against MLA staff, available for Members to use as and when required.

⁹ <https://www.lra.org.uk/resources/advisory-guide/advice-conducting-employment-investigations>

35. The Group considered that the first option treated MLA staff differently from Assembly Commission staff and Party staff, in that the employer did not investigate the complaint. For the second and third options, it would first be necessary to consider how investigation costs will be met. If utilising an independent investigator through the LRA, the MLA (as the employer) would be required to agree the terms of reference and cost of the investigation at the outset and to monitor completion of the investigation in accordance with these.
36. In the event that an IIS was procured, consideration might be required as to whether all complaints raised under the policy should be investigated by the IIS (as is the case in the HoC) and complaints under the policy against MLAs would therefore not be investigated by the Commissioner (although they would receive the investigation report). Procuring an IIS for investigations for only part of the policy (which may lead to a low number of investigations) may not be attractive to potential service providers. Also, the Group noted that introducing an IIS for investigations into Assembly Commission and Party staff would require consultation with those staff and/or representative trade unions.
37. The Group therefore invites the Committee to give further consideration to the abovementioned options for the investigation of complaints against MLA staff and also suggests that the Committee consults publicly on the proposals in relation to MLAs as part of its role in reviewing the Code of Conduct.

Consideration of investigation reports and imposition of sanctions

38. For complaints upheld following investigation against someone other than an MLA, the investigation report should be considered by the relevant employer and a sanction applied as appropriate. For example, a finding against an MLA's staff member would be considered by the MLA, as their employer. Similarly, any sanction against a member of Assembly Commission staff will be imposed by the Commission in accordance with their policies. This is reflected in the draft Policy.

39. Following investigation into a matter involving an MLA by the Commissioner, a report is prepared and presented to the Committee. If the Committee finds that a breach of the Code of Conduct has occurred, it can put forward a motion to the Assembly recommending imposition of a sanction.
40. To an individual who has been subject to unacceptable behaviour, particularly behaviour of a sexual nature, the current process is likely to appear complex and potentially daunting. They may also have concerns regarding the independence of the process as, following an investigation into the conduct of an MLA, the decision on whether a breach of the Code of Conduct has occurred and what sanction might be appropriate, is taken by other MLAs.
41. The HoC has appointed an Independent Expert Panel to determine complaints referred to it under the Independent Complaints and Grievance Scheme (ICGS). The functions of the Panel include:
 - (i) To determine the appropriate sanction (from an established range of sanctions that do not require consideration by the House) in ICGS cases referred to it by the Commissioner;
 - (ii) To hear appeals against the decisions of the Commissioner in respect of ICGS cases involving Members of the House;
 - (iii) To hear appeals against a sanction imposed under paragraph (i) above.
42. The Group noted that the Committee has considered the recommendation in *New Decade New Approach* (NDNA) (paragraph 1.12 of Annex A) that: 'The Assembly Committee on Standards and Privileges will be enhanced by the appointment of 3 independent lay members with voting rights.' The Committee has accordingly agreed, in principle, to seek an amendment to Standing Orders to make provision for the appointment of lay members to the Committee.
43. In light of this, the Group considered whether the role of the independent lay members might be extended to include considering investigation reports under the Policy that involve MLAs and determining sanctions (from within a range of sanctions that do not require consideration by the Assembly), and was satisfied that there was no legal impediment to such an approach. The Group considered

that this would increase independence in the decision making process, and that utilising lay members to consider a report could be said to enhance the process in terms of procedural fairness. The Group noted, however, that Standing Order 63 currently makes limited provision in relation to power of a committee to establish sub-committees to discharge its functions.

44. Given the above considerations, the draft Policy is drafted to reflect that investigation reports pertaining to complaints against MLAs will be considered by a sub-committee/panel of the Committee comprising the three lay members of the Committee (the title Unacceptable Behaviours Complaints Sub-Committee/Panel is suggested). This will require amendments to Standing Orders, including to provide the sub-committee/panel with the necessary decision-making powers.
45. Currently, the respondent in an investigation by the Commissioner is given an opportunity to comment on the 'findings of fact' in the Commissioner's investigation report before it is finalised (and is also subsequently provided with an opportunity to respond to the full Commissioner's report before it is considered by the Committee). In relation to matters raised under the Policy, it would seem unfair and imbalanced if only the respondent was given opportunity to comment on the investigation report. The Group also considered whether, in the interests of transparency and fairness, it would be reasonable that the complainant should have the same opportunity as the respondent to comment or make representations at appropriate junctures.
46. The draft Policy therefore reflects that both the complainant and respondent will be provided with an opportunity to comment on the Commissioner's 'findings of fact' prior to completion of the investigation report and will have equal opportunity to comment (in person or by submitting a written statement, as determined by the sub-committee/panel) on the completed investigation report before the sub-committee/panel concludes its adjudication (these provisions can be updated, as necessary, to reflect the outcome of the Committee's ongoing review of the practices in this area).
47. While the sub-committee/panel may recommend a sanction against an MLA, the Group's advice was clear that, in the absence of specific provision, there

would be a legal risk in the imposition of sanctions on a Member without those sanctions being considered by the Assembly in plenary. The Group noted that amendment to standing orders would be required if this was the preferred approach; but that such amendment may be apt, since the proceedings of the Assembly must generally take place in public and it may not be appropriate for certain matters under the Policy to be the subject of public debate.

48. The Group noted from its advice that, under current standing orders, it may be that consideration of sanctions by the Assembly would not require full debate, although a report on which sanction is proposed should be managed in some form in plenary (whether the report and recommendation for sanction comes from the Committee or sub-committee/panel of lay members). The draft Policy has been drafted to reflect current provisions, requiring the report and sanction to be referred to the Assembly. However, it is preferable that this might be for mention in plenary, rather than full debate. The Group has therefore proposed that the Committee considers taking forward any necessary procedural amendments to enable the Assembly, where applicable, to impose sanctions on a Member who has breached the Policy without the details of the complaint case being debated publicly in full plenary debate.

Appeals

49. In accordance with good practice, the draft Policy includes an appeal stage that enables the complainant or the respondent to outline the grounds on which they disagree with the finding of the investigation. The respondent may also appeal against a sanction imposed following the investigation (or, in the case of complaints against an MLA, the sanction to be recommended to the Assembly). Where possible, appeals should be considered by a person or persons not previously involved in the matter. For an MLA's staff member, Party staff or an Assembly Commission employee, an appeal against a sanction imposed would be managed by the employer.
50. As small employers, it may be difficult for an MLA to have an appeal considered by a person not previously involved in the matter. This situation is

acknowledged in the Labour Relations Agency's Advisory Guide on handling discipline and grievances at work, which states:

In small businesses, it may not be possible to find someone with higher authority than the person who made the original disciplinary decision. If this is the case, that person should act as impartially as possible when hearing the appeal, and should use the meeting as an opportunity to review the original decision.¹⁰

51. The Group considered whether appeals involving MLAs could be considered by other members of the Committee, or if a higher number than three independent lay members might be appointed to the Committee, to rotate in and out of the Committee at any point in time, in order to exercise the adjudication function for investigations and appeals (e.g. NDNA does not prevent the appointment of six lay members, with only three members with voting rights actually sitting in the Committee at any time).
52. However, the logistics of rotating three lay members to consider the initial report and a different three to consider the appeal is likely to prove difficult, particularly, for example, if there are a high number of cases or a lay member is not available for a period of time. It is therefore proposed that appeals will be considered by the Committee and this is reflected in the draft Policy. While having the Committee responsible for appeals may lead to concerns regarding lack of independence, it is proposed that the grounds for appeal in the Policy should be specific and relatively narrow: i.e.
 - The correct procedures have not been followed;
 - Certain findings of fact are inaccurate; or
 - New evidence has come to light that was not considered in the investigation.

¹⁰ See page 39 at following link: <https://www.lra.org.uk/sites/default/files/2019-03/Advisory%20Guide%20-%20Advice%20on%20handling%20discipline%20and%20grievances%20at%20work.pdf>

Confidentiality

53. All of those involved in a complaints process must have reassurance in the confidentiality of the process. In addition to the person raising a complaint under the Policy, this is equally important for the person against whom an allegation has been made. MLAs, as public figures, are likely to be concerned that an allegation might be repeated in public and attributed to them, when the matter remains under investigation and has not been upheld.
54. At present and under the provisions of the Code of Conduct, MLAs are prohibited from disclosing confidential or protectively marked information (Rule 12) and from disclosing details of ongoing investigations (Rule 17). Also, section 33 of the 2011 Act prevents persons assisting the Commissioner from disclosing information on complaints. However, the Group noted that the scope of this provision could be interpreted as quite narrow (e.g. covering staff in the Commissioner's office) and there is no specific offence for a breach of section 33.
55. While there may be some provision for the Commissioner to address breaches of confidentiality by an MLA, this is not the case for others who might make a complaint against an MLA. Within the context of the Policy, it is important that all parties to a complaint/investigation are treated fairly. To encourage confidentiality by all of those involved in the process, it is proposed that both the complainant and respondent to a complaint raised under the Policy will be required to sign a confidentiality agreement (to be developed) at the outset of the process. This could be implemented as a temporary measure subject to the outcome of a review of section 33 of the 2011 Act, as recommended below.
56. Within the context of the Policy itself, it is unlikely that any sanction will be possible, should one of the parties breach a confidentiality agreement. However, as alluded to above, should an MLA disclose information regarding a complaint/investigation, this may constitute a breach of the Code of Conduct, possibly leading to investigation by the Commissioner.

57. The Group took legal advice in relation to discontinuation of proceedings in the event of a breach of confidentiality and it was suggested that, while under existing provisions it is not clear that the Commissioner could discontinue an investigation on grounds of disclosure of information, such a disclosure could be said to be an abuse of the complaints process. The draft Policy includes provision for the Commissioner and the Committee (whose authority would be required), where they have reasonable grounds to believe that information has been disclosed, to decide to discontinue the investigation process. Inclusion of the provision may require amendment of the General Procedures Direction. In doing so, the draft Policy provides for potential action against both an MLA and for example a member of the public, in the event of a breach of confidentiality.
58. Notwithstanding the proposed provisions for confidentiality agreements and discontinuation on grounds of disclosure of information, the Group also recommends that the Committee examines the case for bringing forward legislation to amend section 33 of the 2011 Act to make clear that the restriction on the disclosure of information on complaints and investigations applies to complainants and respondents and to create a statutory offence for breaches of this requirement.

Anonymity in a complaint raised under the Policy

59. The Group took legal advice on scope for the Committee to provide anonymity in cases raised under the Policy, whilst fulfilling its function of publishing the Commissioner's investigation report (in accordance with Standing Order 69A (3)(e) and section 27 of the 2011 Act).¹¹ The advice indicated that the Assembly is required under section 27(3) of the 2011 Act to publish a report made by the Commissioner, and that the Committee (which exercises this function on behalf of the Assembly) may not redact a Commissioner's report if there is no basis on which it may lawfully do so.

¹¹ <http://www.niassembly.gov.uk/assembly-business/standing-orders/standing-orders-5-july-2021/#a69a> ; <https://www.legislation.gov.uk/nia/2011/17/section/27>

60. The Group was, however, advised that there are a number of legal provisions which could require the redaction of a Commissioner report before its publication by the Committee. The Committee must act in a manner compatible with the European Convention on Human Rights ('the Convention') and in some cases this may require it to remove personal information from a report. It is also necessary for the Committee to consider its obligations under the Convention; the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR). The Group noted that a case-by-case approach in relation to anonymity/publication of reports would be the approach most likely to ensure the Committee complied with its legal obligations under the 2011 Act.
61. The Group noted that the General Procedures Direction may need to be amended to confirm that, in applying the rectification procedure to less serious breaches of the Policy, the Commissioner can use the existing provision in subparagraph 8.2 of the Direction, which enables the Commissioner to omit evidence from her correspondence to the Committee where this is necessary to prevent disclosure of confidential or private data and that data has not been relied on by the Commissioner to reach a decision. This measure would help to reduce the risk of personal data being disclosed to the Committee unnecessarily.
62. The draft Policy includes a general statement of compliance with DPA and data protection principles.

Further issues

63. The Policy and the MLA Code of Conduct do not apply to behaviour in the Chamber, when Standing Order 65 applies. However, Standing Order 65 appears to be focussed on disorderly conduct and un-parliamentary language and may not fully address unacceptable behaviour as defined in the Policy.
64. In terms of comparators, it is noted that the House of Lords (HoL) has recently amended its procedures by allowing investigations under the ICGS into alleged bullying, harassment or sexual misconduct that took place in the course of

proceedings in the Chamber (and committees), while recognising that freedom of speech is a primary consideration during any such investigation by the HoL Commissioner for Standards. Also, the Standards Committee in the HoC has recently suggested that the Speaker could have the option of referring a matter of conduct in the Chamber (or elsewhere in proceedings) to the Commissioner for investigation.¹²

65. Given these considerations, the Group recommends that the Committee liaises with the appropriate authorities to establish whether there are sufficient arrangements in place to deal with unacceptable behaviour in the Chamber or whether further measures, including a review of Standing Order 65, are required.
66. The development of the Policy is a joint endeavour by the Assembly Commission and the Committee. The provisions of the Policy will impact on MLAs, their staff, Party staff and Assembly Commission staff.
67. Policies of this nature generally open with a statement of commitment by the policy owner to creating/sustaining an environment free of unacceptable behaviour but also an undertaking to address such behaviour. Once implemented, it will also be important to monitor implementation and keep the Policy under review in order to ensure that it operates as intended and is fit for purpose. It is therefore important that ownership of the Policy and responsibility for monitoring and review is clearly defined.
68. The draft Policy has been developed to reflect joint ownership of the Policy by the Assembly Commission and the Committee. Both bodies will wish to consider this aspect further.
69. As the Policy impacts on Assembly Commission staff, policy consultation with Trade Union Side can be taken forward by the Commission's HR office at the appropriate time. In terms of MLAs, the Group recommends that the Committee consults publicly on the proposals as part of its role in reviewing the Code of Conduct.

¹² See paragraph 79, page 23 of the following report:
<https://committees.parliament.uk/publications/7999/documents/82638/default/>

Recommendations

70. In light of its consideration of the issues and options outlined above, the Group makes the following recommendations to the Committee and to the Assembly Commission as applicable:
- 1) That both the Committee and the Assembly Commission consider the draft Policy on Unacceptable Behaviours (as contained in the Annex) and that, following consultation with their respective stakeholders and any agreed amendments, the draft Policy is adopted by both bodies for implementation.
 - 2) That, following agreement of the draft Policy, the Committee considers whether: the MLA Code of Conduct should be amended to make clear that the Behaviour Code is a Principle of Conduct; and whether Rule of Conduct 10 should be amended to include a specific reference to the Policy, in order to highlight in the Code of Conduct the importance of the Policy (see paragraphs 20 – 23 and suggested amendments at Appendix 4).
 - 3) That, following agreement of the proposed reforms, the Committee examines how the necessary amendments might be made to the procedures (in Standing Orders and the General Procedures Direction) to, amongst other things:
 - a. widen the scope of the rectification procedure to enable minor breaches of the Policy to be resolved informally under the procedure (paragraphs 24 – 30);
 - b. specify the format of correspondence from the Commissioner to the Committee on minor breaches under the Policy, which are deemed to be suitable for rectification (paragraphs 27 – 29);

- c. (as a potential temporary measure subject to the recommendation at 72(5)) require both the complainant and respondent to sign a confidentiality agreement at the outset of the process; and for the Commissioner/Committee, where they have reasonable grounds to believe that information has been disclosed, to decide to discontinue the investigation process (paragraphs 55 – 60);
 - d. provide that investigation reports pertaining to complaints against MLAs will be considered by a sub-committee/panel of the Committee comprising the (proposed) three lay members of the Committee, with appeals being considered by the Committee as applicable (paragraphs 40 – 46); and
 - e. enable the Assembly, where applicable, to impose sanctions on a Member who has breached the Policy without the full details of the complaint case being debated publicly in plenary (paragraphs 49 – 50).
- 4) That, following the outcome of the Committee's ongoing review of the practices for ensuring natural justice and procedural fairness, it considers whether further measures should be introduced to provide complainants in cases arising under the Policy with similar opportunities to comment on findings and to be heard as currently exist for the respondent (paragraphs 47 – 48).
- 5) That, with a view to underpinning the confidentiality arrangements, the Committee examines the case for legislation to amend section 33 of the 2011 Act to make clear that the restriction on the disclosure of information on complaints and investigations includes complainants and respondents and to create a statutory offence for breaches of this requirement (paragraphs 55 – 60).
- 6) That the Committee liaises with the appropriate authorities to establish whether there are sufficient arrangements in place to deal with unacceptable behaviour in the Chamber, having regard to the

necessary considerations in relation to freedom of expression in
Assembly proceedings (paragraphs 65 – 67).

Annex: Draft Unacceptable Behaviours Policy

UNACCEPTABLE BEHAVIOURS POLICY

(draft 03.03.2022)

Introduction

- 1 The Northern Ireland Assembly is committed to equality of opportunity and to creating and sustaining an environment where everyone is treated with respect and dignity, free from any type of unacceptable behaviour.
- 2 Unacceptable behaviour will not be tolerated and anyone subject to this should feel confident in raising the matter, formally or informally.
- 3 The aim of Unacceptable Behaviours Policy ('the Policy') is to explain
 - the standards of behaviour that are expected;
 - the types of behaviour that may be considered unacceptable;
 - the process for raising a complaint and having this considered (formally or informally); and
 - the sources of help and support available to complainants and those subject to a complaint under the Policy.
- 4 The Policy has been developed jointly by the Northern Ireland Assembly Commission ('the Commission') and the Assembly's Committee on Standard and Privileges ('the Committee').

Behaviour Code

- 5 The Commission has established a Behaviour Code clearly setting out the standards of behaviour expected within the Assembly. Whether you are a visitor to Parliament Buildings or whether you work for or within the Assembly, this Behaviour Code sets out how you should be treated and how you should treat others.
- 6 You should at all times:
 - Show respect to and value everyone. Bullying, harassment, discrimination and sexual misconduct will not be tolerated;

- Be aware of your power, influence or authority and don't abuse them;
 - Think about how your behaviour affects others and always strive to understand their perspective;
 - Act professionally towards others;
 - Speak up about any unacceptable behaviour that you experience; and
 - Display the highest ethical standards of integrity, courtesy and mutual respect.
- 7 Members of the Legislative Assembly (MLAs) are encouraged and expected to observe the principles of the Behaviour Code of respect, professionalism, understanding others' perspectives, courtesy and acceptance of responsibility. MLAs must comply with the Code of Conduct of the Northern Ireland Assembly ('the Code of Conduct') ([link](#)). It is this Policy (in terms of the unacceptable behaviours defined therein) that is enforceable in regard to MLAs and a breach of the Policy by an MLA is regarded as a breach of Rule 10 of the Code of Conduct.

Policy Scope

- 8 The scope of the Policy includes the management and investigation of complaints regarding behaviour by MLAs, MLA staff, Party Staff and Commission staff (including temporary workers, inward secondees and contractors acting/working on behalf of the Assembly Commission) which is defined as unacceptable by the Policy. A complaint may be made by or against any of these groups.
- 9 In addition, a complaint may be made by a member of the public in relation to a matter that has arisen within the context of work/activity associated with Assembly business (conducted within Parliament Buildings or at another location, including outside of Northern Ireland). In relation to an MLA, Assembly business includes any activity in which they are participating/acting in their capacity as an MLA, whether this activity occurs in Parliament Buildings, at a constituency office, or elsewhere.
- 10 The Policy does not cover conduct by an MLA within the Assembly Chamber, in which case the provisions of Standing Order 65 apply. Similarly, the Policy recognises that the Code of Conduct upholds Members' right to freedom of expression.
- 11 Complaints which are considered frivolous or vexatious or otherwise an abuse of the complaints policy, will not be admissible under this Policy. Similarly, complaints relating to service or performance standards and outcomes received from MLAs or their staff, including in a constituency office setting, may not be submitted under the Policy.

What is unacceptable behaviour?

- 12 The term unacceptable behaviour can be used to describe a range of behaviours that may have an adverse impact – this may include bullying, harassment (including sexual harassment), and victimisation. The Policy defines these behaviours as:

Any form of unwanted, unreasonable and offensive conduct that has the purpose or effect of violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment. Conduct shall be regarded as having this effect only if, having regard to all circumstances and in particular the complainant's perception, it should reasonably be considered as having that effect.

- 13 The Policy is intended to address such behaviour/conduct whether it occurs in person or remotely, for example by email, phone, text, on-line/through social media. Such behaviour/conduct may occur in a single and isolated serious incident or in multiple incidents occurring over a period of time.

Bullying

- 14 There is no legal definition of bullying. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour involving an abuse or misuse of power that is intended to or has the effect of making another person feel vulnerable, upset, undermined, coerced, humiliated or threatened. Power does not always mean being in a position of authority and can include both personal strength and the power to coerce through fear or intimidation. Bullying is not normally linked to an individual's personal characteristics.

- 15 Examples of bullying include:

- Verbal abuse, including shouting, swearing, insulting or ridiculing a person or humiliating them;
- Making jokes at the expense of an individual;
- Threatening behaviour, physically or psychologically;
- Abuse of authority or power, such as placing unreasonable work demands on a member of staff and/or coercing them to meet those demands.

What is not bullying

- 16 Within an employment situation, legitimate, constructive and fair criticism of an employee's performance or behaviour at work is not bullying. Isolated incidents of behaviour such as abruptness, sharpness or rudeness, while not acceptable, should not be described as bullying and should be dealt with in the first instance by letting the person know how their behaviour has made you feel.
- 17 An employer is entitled to ensure proper management of their staff, including providing feedback on issues such as performance managing poor performance. Similarly, employers must take reasonable action to control absenteeism or misconduct by the legitimate exercise of managerial control. This is not regarded as bullying.

- 18 Bullying is something more than just a firm management style. If an employer issues an instruction which an employee considers unreasonable, the employee may have a legitimate grievance. However, this should be pursued through the grievance procedure.
- 19 The behaviour of individuals in the workplace can vary from day to day. Someone who is normally perfectly civil may occasionally appear impatient, pre-occupied and fail to show the courtesy expected of them. This may be for a variety of reasons including pressure of work, domestic difficulties or ill health. The Policy is not intended to deal with occasional minor lapses of good manners, courtesy or respect, unless a pattern of behaviour emerges that becomes objectionable or intimidating in itself, in which case such behaviour can constitute bullying. Only persistent offensive behaviour, or offensive behaviour which is displayed in a single serious act, may be regarded as bullying.

Harassment

- 20 Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity and created an intimidating, hostile, degrading or offensive environment and which is linked to any aspect of the individual's personal characteristics, for example their appearance, gender, sexual orientation, disability, race, religious belief or accent. It is unwanted behaviour that is not encouraged or reciprocated by the recipient. If an individual makes it clear that the behaviour is not wanted (even if it is not on the face of it behaviour that would offend an objective bystander) then to continue with such behaviour may constitute harassment.

- 21 Examples of harassment include:

- Sending or displaying offensive material in any format, including images, graffiti, jokes that may intimidate or cause offence;
- Mocking, mimicking, belittling, or making jokes about a person or group stereotype for example in relation to the attire worn by those of an ethnic or religious background;
- Use of inappropriate language or racial or other stereotypes, regardless of whether the complainant is in fact a member of the group stereotyped;
- Deliberately arranging meetings or work related social events in a location that is not accessible for an individual, for example because of their disability, therefore excluding them.

Harassment would not, for example, include sharing of party political information or display of flags or emblems associated with the ethos and beliefs of a political party, which is done in accordance with relevant legislation and any applicable policy of the Assembly or the Assembly Commission.

Sexual Harassment

- 22 Sexual Harassment may be defined as any unwanted behaviour of a sexual nature, whether verbal or physical, that makes a person feel distressed, intimidated or humiliated.

23 Examples of sexual harassment include

- Unwanted and unwelcome sexual advances or physical contact, for example putting an arm around a person or touching any part of their body;
- Unwanted and unwelcome comments to a person relating to their appearance, clothes or gender that might be construed as sexual in nature;
- Making sexual approaches and/or seeking sexual favour, particularly when the instigator of this behaviour is in a position of authority or power;
- Initiating and engaging in conversation of a sexual nature, even in banter or as a joke, that may be regarded as others as offensive and/or intimidating.

Victimisation

- 24 This Policy also offers protection for an individual who makes a complaint and others who give evidence or information in connection with a complaint, from victimisation. Victimisation occurs where a person who has made a complaint or assisted a complainant or respondent under this Policy, is subject to unacceptable behaviour as a consequence.

What can you do if you feel you have been subject to unacceptable behaviour?

- 25 In the first instance and if you feel comfortable/able to do so, you may speak with the person who has displayed the behaviour, explain how the behaviour made you feel, and ask that it is not repeated.
- 26 On many occasions, the behaviour will not have been intentional and an early conversation may address the situation.

What should you do if you are advised that your behaviour has caused offence?

- 27 If you are advised that your behaviour has caused offence/upset, you will probably find the accusation upsetting. You should take the matter seriously, reflect on your behaviour that has caused offence/upset and seek to resolve the situation at an early stage. There are a number of things you may wish to consider:
- Remain calm and objective, be open to the concerns being raised with you;
 - Do not dismiss the matter, try to convince the other person that their complaint is invalid, or pressure them to withdraw their accusation;

- Reflect on your behaviour, how it might have caused offence/upset and whether it needs to be modified;
- If you consider it appropriate, acknowledge that your behaviour could have led to offence/upset and undertake that it will not reoccur – issue an informal verbal apology if you are comfortable to do so.

28 You may wish to keep a note of any discussions or meetings that take place.

How to raise a complaint under the Policy

29 All complaints under this Policy should be submitted in the first instance, to the Northern Ireland Assembly Commissioner for Standards ('the Standards Commissioner').

30 You should submit your complaint by completing the Unacceptable Behaviours Complaint Form (link) and sending it to:

Standards Commissioner for the Northern Ireland Assembly
Room 222, Parliament Buildings,
Stormont
Belfast
BT4 3XX

Or by email to standardscommissioner@niassembly.gov.uk

When you should raise your complaint

31 You should raise your complaint in writing as soon as is reasonable after the alleged behaviour giving rise to the complaint.

32 In most cases, a delay of more than 6 months in making a complaint will not be regarded as reasonable. This 6-month period is from the date of the alleged behaviour, or from the most recent alleged behaviour if the complaint relates to a series of behaviours.

33 In extenuating circumstances, there may be discretion to accept a complaint outside of the 6-month period.

Transitional provisions for historical complaints

34 Should you wish to submit a complaint regarding unacceptable behaviour as defined by the Policy that occurred before the issue of the Policy and the matter has not previously been subject to formal investigation, you must submit your complaint using the Unacceptable Behaviours Complaint Form (link) within 6 months from the date of issue of the Policy, (insert issue date here).

35 Historical complaints will not be accepted after this 6-month period. In considering historical complaints, the prevailing policies/conduct standards in force at the time of the alleged behaviour/incident will be considered.

Management of Complaints against Commission staff, MLA staff and Party staff

- 36 If your complaint is against a Commission staff member, the Standards Commissioner will refer the complaint to the Assembly Commission Human Resources Office.
- 37 The complaint will be managed in accordance with the Commission's policies and procedures, including consideration of informal and formal action and appeal mechanisms.
- 38 If your complaint is against an MLA's member of staff, the Standards Commissioner will refer the complaint to the relevant MLA, as the employer, for management in accordance with their policies and procedures, including consideration of informal and formal action and appeal mechanisms.
- 39 If your complaint is against a member of Party staff, the Standards Commissioner will refer the complaint to the relevant Party for management in accordance with its policies and procedures, including consideration of informal and formal action and appeal mechanisms.
- 40 The Standards Commissioner will write to you at the earliest opportunity to confirm that your complaint has been referred to the Commission or relevant MLA or Party, as appropriate.

Management of Complaints against an MLA

- 41 On receipt of your complaint, the Standards Commissioner will write to you at the earliest opportunity to acknowledge receipt of your complaint.
- 42 The Standards Commissioner will decide whether the complaint is admissible under the Policy and will be accepted. If this is not the case, the Standards Commissioner will write to you and advise you that your complaint has not been accepted, setting out the reasons why.

Informal resolution

- 43 It is always preferable to resolve a problem through informal means, where this is appropriate. You do not have an automatic right to request that your complaint is formally investigated by the Standards Commissioner. If your complaint is accepted, the Standards Commissioner will consider the detail of your complaint and whether it is appropriate to deal with the matter through informal resolution. (such informal resolution will be managed under the rectification procedure set out in the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011 (General Procedures) Direction 2021 – 'the General Procedures Direction' – and Assembly Standing Orders). This may be appropriate for example, if the alleged unacceptable behaviour is relatively minor and has not happened at any other time prior to or since the incident complained about. Informal resolution measures may include:

- **Mediation** – this is a way of solving problems so that you can come to a workable agreement with someone else. Mediation requires agreement from both parties and the solution to the problem is worked out by the parties and is not imposed; and
- **An apology to the complainant** – verbally or in writing;

Formal investigation

- 44 If the Standards Commissioner determines it to be appropriate, they will conduct a formal investigation into the allegations that have been made and this will be carried out in accordance with the applicable provisions of the General Procedures Direction. In conducting their investigation, the Standards Commissioner will liaise with you in relation to your allegations, in order to clarify information as required. The individual against whom the complaint has been made (the respondent) will be advised of the allegations against them and will be asked to respond to them. The Standards Commissioner may request information from witnesses to the alleged behaviour and will consider any other evidence provided by all parties to the investigation.
- 45 At the conclusion of their investigation, the Standards Commissioner will prepare their investigation report, including their findings of fact in their view on whether there has been a breach of the Policy. You and the respondent will be provided with an opportunity to comment on the findings of fact before the investigation report is completed.
- 46 Where during an investigation the Standards Commissioner decides that the conduct of an MLA should be investigated by the police or other public body, the Commissioner may liaise with the police or such other public body as they deem appropriate.
- 47 The Standards Commissioner will refer their findings to the Unacceptable Behaviours Sub-Committee/Panel ('the Sub-Committee'/'the Panel'), which is comprised of three independently appointed Lay Members of the Committee, that is, they are not elected MLAs. In presenting their findings, should the Standards Commissioner consider that the alleged behaviour was minor or inadvertent, they may include a recommendation to the Sub-Committee/Panel that the matter is dealt with using the Rectification Procedure established in Assembly procedures ([link](#)). If the Sub-Committee/Panel accepts the Commissioner's recommendation, the matter will not require a report to the Assembly.
- 48 In cases involving formal investigation, the Sub-Committee/Panel will consider the Standard Commissioner's investigation report. You and the MLA complained about (the respondent) will be provided with an opportunity to comment on the investigation report (in person or through a written submission) prior to the Sub-Committee's/Panel's deliberations.
- 49 Having considered the investigation report and any submissions from you and the respondent, the Sub-Committee/Panel will decide whether there has been a breach of the Policy and will report to the Assembly. The Sub-

Committee/Panel may, where applicable, recommend that a formal sanction is appropriate, for example:

- An apology to the Assembly;
- Censure of the Member by the Assembly;
- Exclusion of the Member from proceedings of the Assembly for a specified period and withdrawal of any of the member's rights and privileges (including salary and allowances) as a Member for that period.

50 Formal sanctions may only be imposed by the Assembly. For that reason, the Standard Commissioner's investigation report and recommendation of the Sub-Committee/Panel will be submitted for decision in the Assembly.

51 You will be advised in writing by the Sub-Committee/Panel if your complaint has/has not been upheld and if the Rectification Procedure has been applied or a sanction imposed by the Assembly.

Appeals

52 Appeals against the Standards Commissioner's investigation report and findings may only be submitted on one or more of the following grounds:

- The correct procedure as set out in this Policy has not been followed;
- Certain findings of fact by the Standards Commissioner are not accurate;
- New evidence has come to light that was not considered in the investigation.

53 It is not sufficient to simply list the ground(s) on which you are appealing – you must set out why you believe this to be the case. All appeals must be submitted in writing within 10 working days from notification of the investigation outcome.

54 As indicated above, you and the MLA complained about will be provided with an opportunity to comment on the investigation report (in person or through a written submission) prior to the Sub-Committee's/Panel's deliberations. In addition, you or the MLA complained about may submit an appeal against the findings of the Sub-Committee/Panel on one or more of the grounds set out in paragraph 52 above. The appeal should be submitted to the Clerk to the Committee on Standards & Privileges at the address provided above.

55 An MLA will be advised of any sanction/sanctions recommended by the Sub-Committee/Panel under the Policy, and may also submit an appeal against these.

56 Appeals should be submitted to the Clerk to the Committee on Standards & Privileges at

Parliament Buildings

Stormont

Belfast

BT4 3XX

or by email to committee.standardsprivileges@niassembly.gov.uk

- 57 The Committee will consider the information set out in the appeal and may, if they consider it necessary, seek clarification/further information.
- 58 You will be advised in writing of the outcome of your appeal. There is no further right of appeal.

Confidentiality

- 59 All complaints submitted under the Policy are confidential and will be managed accordingly, whether they are subject to investigation by the Standards Commissioner, the Assembly Commission or relevant Party. You and the respondent to a complaint are required to maintain confidentiality throughout the complaints process. Information collated in relation to your complaint will be held and managed in accordance with the Data Protection Act 2018 and Data Protection principles.
- 60 You and the respondent will be required to sign a Confidentiality Agreement at the outset of the complaint process (link). You should be aware that, if the Standards Commissioner and the Committee have reasonable grounds to believe that you have breached the Confidentiality Agreement, consideration will be given to discontinue your complaint.
- 61 If an MLA, as party to a complaint, breaches the Confidentiality Agreement, this may be considered a breach of the Code of Conduct and may be referred to the Standards Commissioner.

Policy review

- 62 The Commission and the Committee will monitor and review the Policy.

Further information/support

[D.N. To be completed]

Appendices

Appendix 1: Minutes of Group meetings

Working Group on Unacceptable Behaviours Policy

Minutes of Meeting

15 April 2021

Meeting Location: Microsoft Teams

Present by Video or Teleconference:

John Blair MLA
Robbie Butler MLA
Pam Cameron MLA
Sinead Ennis MLA
Dolores Kelly MLA

Apologies: None.

In Attendance by Video or Teleconference:

Shane McAteer (Assembly Clerk)
Karen Martin (Deputy Head of Human Resources)
Ray McCaffrey (Researcher)
Marie Austin (Senior Assistant Assembly Clerk)
David McClure (Assistant Assembly Clerk)

The meeting commenced at 2.04pm

The Clerk opened the meeting.

Pam Cameron MLA joined the meeting at 2.05pm

Declaration of Interests

Members were reminded of the need to declare any relevant interests as and when they arise in discussions of the Working Group as applicable.

Procedures for Working Group meetings

The following Procedures were agreed:

Agreed: The Working Group agreed a quorum of 2 members for meetings.

Agreed: The Working Group agreed to continue to hold the meetings remotely on Microsoft Teams in the current public health circumstances.

Agreed: The Working Group agreed that, by implication, members are deemed to be present at meetings when attending via means of video/teleconferencing.

Agreed: The Working Group agreed that, if the Group is unable to reach consensus, decisions will be taken on the basis of a simple majority.

Agreed: The Working Group agreed that decisions can be taken via correspondence if necessary.

Agreed: The Working Group agreed that John Blair will be the Chairperson of the Working Group meetings.

John Blair took the Chair.

Agreed: The Working Group agreed that a temporary Chairperson will be elected if the Chairperson is unable to attend all or part of future meetings.

Agreed: The Working Group elected Dolores Kelly as temporary Chairperson for this meeting, as the Chairperson was due to leave the meeting early.

Agreed: The Working Group agreed that meetings would be minuted.

Background to the establishment of the Working Group

Members considered a paper by Karen Martin, Deputy Head of Human Resources: *Unacceptable Behaviours Policy – Key Principles*.

The Deputy Head of Human Resources outlined the background to the establishment of the Working Group.

Current policies and complaints handling processes

The Deputy Head of Human Resources outlined the current grievance policy for Member's employees and the Assembly Secretariat Staff/Member Protocol.

The Clerk outlined the process for handling complaints of alleged breaches of the Members' Code of Conduct including the role of the Commissioner for Standards.

Agreed: The Working Group agreed that the Chairperson will meet with the Clerk and the Deputy Head of Human Resources to gain a greater understanding of the topic and to consider when the Group might next meet.

John Blair left the meeting at 2.29pm and Dolores Kelly took the chair for the remainder of the meeting.

Dolores Kelly MLA declared an interest in relation to an ongoing complaint case. The Clerk advised that the matter did not present a conflict of interest in relation to membership of the Working Group.

Sinead Ennis joined the meeting at 2.30pm

Developments in other legislatures – briefing by Assembly Research

Ray McCaffrey, Assembly Researcher, presented his paper: *Unacceptable behaviours – update on developments in other legislatures* (NIAR 74-2021).

Agreed: The Working Group agreed that there should be liaison with other legislatures throughout the development of the policy.

Agreed: The Working Group agreed that Members would consider the research paper further with party colleagues and contact the Clerk/Deputy Head of Human Resources for clarification if required.

Agreed: The Working Group agreed that Members would submit any comments on the development of an unacceptable behaviours policy to the Clerk.

Potential scope and elements of an Unacceptable Behaviours Policy

The Deputy Head of Human Resources outlined the potential issues to be covered in an unacceptable behaviours policy.

Issues to address, actions and next steps

The Working Group gave initial consideration to the range of policy, legal and process issues which have been identified already and that will need to be explored as part of the work of the Group.

Agreed: The Working Group agreed that the Secretariat will prepare an issues paper for more detailed consideration at the next Group meeting.

Agreed: The Working Group agreed that, in order to facilitate progress in the meantime, the Secretariat commissions research and/or legal advice, as necessary, on any issues identified.

Any other business

There were no other items of business raised.

Date of Next Meeting

Agreed: The Working Group agreed that the date for the next meeting of the Group will be set by the Chairperson following discussion with the Secretariat.

Working Group on Unacceptable Behaviours Policy

Minutes of Meeting

24 June 2021

Meeting Location: Microsoft Teams

Present by Video or Teleconference:

John Blair MLA
Robbie Butler MLA
Pam Cameron MLA
Sinead Ennis MLA

Apologies: Dolores Kelly MLA

In Attendance by Video or Teleconference:

Shane McAteer (Assembly Clerk)
Karen Martin (Deputy Head of Human Resources)
Rebecca Ellis (Legal Adviser)
Marie Austin (Senior Assistant Assembly Clerk)
Sohui Yim (Assistant Assembly Clerk)
Jim Nulty (Clerical Supervisor)
Alison Ferguson (Clerical Officer)

The meeting commenced at 2.30pm

Apologies

Apologies are detailed above.

Declaration of Members' Interests

Members were advised of the need to declare any relevant interests as and when they arise in discussions of the Working Group as applicable.

Draft Minutes of the meeting

Agreed: The Working Group agreed the minutes of the meeting held on Thursday, 15 April 2021.

Matters Arising

Members noted that the Secretariat met with the Chairperson of the Working Group on 13 May 2021 to discuss key issues.

Members noted that the Secretariat held meetings with the Assembly Commissioner for Standards, Dr Melissa McCullough, on 6 May 2021 and with the House of Commons' Commissioner for Standards, Kathryn Stone, on 20 May 2021 and that the outcome of these discussions will help inform the Working Group's considerations.

Members noted that they will, in due course, have an opportunity to discuss the options for a draft Unacceptable Behaviours Policy within their respective parties before the Working Group concludes its work.

Agreed: The Working Group agreed that, in the meantime, the Group Members could discuss the Assembly Research paper, titled *Unacceptable behaviours – update on developments in other legislatures* (NIAR 74-2021), within their respective parties.

Key Issues for Consideration

Karen Martin, Deputy Head of Human Resources and Shane McAteer, Clerk to the Committee on Standards and Privileges, presented their paper on the key issues for the Working Group's consideration.

Sinead Ennis joined the meeting at 2.43pm.

Rebecca Ellis, Assembly Legal Adviser, provided legal advice to the Working Group regarding arrangements for handling complaints under the proposed Unacceptable Behaviours Policy.

Next Steps

The Working Group discussed the key issues that were presented at the meeting.

Agreed: The Working Group agreed to invite the Assembly Commissioner for Standards, Dr Melissa McCullough, to brief the Committee on her views on the

respective issues at the next meeting, which will help to inform the Group's decisions on the various options.

Agreed: The Working Group agreed that the Secretariat, in discussion with the Chairperson, will prepare a policy paper with recommended options on each of the issues discussed today, together with an outline draft Unacceptable Behaviours Policy, for consideration at the next meeting.

Any other business

There were no other items of business raised.

Date of Next Meeting

Agreed: The Working Group agreed that the date for the next meeting of the Group will be set by the Chairperson following discussion with the Secretariat.

The meeting was adjourned at 3.22pm.

John Blair MLA
Chairperson
Unacceptable Behaviours Policy Working Group

Working Group on Unacceptable Behaviours Policy

Minutes of Meeting

27 January 2022

Meeting Location: Microsoft Teams

Present by Video or Teleconference:

John Blair MLA
Robbie Butler MLA
Linda Dillon MLA
Dolores Kelly MLA

Apologies:

Pam Cameron MLA

In Attendance by Video or Teleconference:

Shane McAteer (Assembly Clerk)
Karen Martin (Deputy Head of Human Resources)
Rebecca Ellis (Legal Adviser)
Marie Austin (Senior Assistant Assembly Clerk)
Karen Barry (Assistant Assembly Clerk)
Simon Gallaher (Clerical Supervisor)

The meeting commenced at 2.32pm

Apologies

Apologies are detailed above.

Declaration of Members' Interests

Members were advised of the need to declare any relevant interests as and when they arise in discussions of the Working Group as applicable.

Robbie Butler declared an interest as the Chief Whip of the Ulster Unionist Party which includes his role in handling complaints within the party.

Dolores Kelly declared an interest as the Chief Whip of the Social Democratic and Labour Party which includes her role in handling complaints within the party.

Draft Minutes of the meeting

Agreed: The Working Group agreed the minutes of the meeting held on Thursday, 24 June 2021

Matters Arising

Members noted that, since the previous meeting on 24 June 2021, Linda Dillon MLA has replaced Sinead Ellis MLA as a member of the Working Group (and as Chairperson of the Committee on Standards and Privileges).

Policy options and draft Policy

Dolores Kelly joined the meeting at 2.41pm

Karen Martin, Deputy Head of Human Resources, and Shane McAteer, Clerk of Standards, presented a Policy Options paper and a draft Unacceptable Behaviours Policy.

Rebecca Ellis, Assembly Legal Adviser, addressed legal questions which arose during the discussion of this agenda item.

Agreed: The Working Group agreed that the draft Policy would be annotated to highlight/address the main issues raised during the discussion of this agenda item, including: how to address unfair/vexatious complaints arising from the constituency office setting; considerations around the definition of bullying; and whether complaints raised under the Policy against MLA staff should be investigated by the Standards Commissioner or by an independent investigator appointed by the employing Member.

Commissioner for Standards – views on the policy options

The Assembly Commissioner for Standards, Dr Melissa McCullough, briefed the Working Group on her views on the issues and options which were being considered as part of the development of the Unacceptable Behaviours Policy.

Linda Dillon left the meeting at 3.58pm

Next Steps

The Working Group discussed the steps which will need to be taken to complete its work and report to the Standards & Privileges Committee before the end of the mandate.

Agreed: The Working Group members agreed to consult within their respective parties and to provide their positions on the draft Policy and outstanding issues by Friday 18 February 2022 in order to enable the Working Group to agree the draft Policy and an accompanying report to the Standards & Privileges Committee at the final meeting on Thursday 3 March 2022.

Agreed: The Working Group agreed that the Chairperson will liaise with the Secretariat in regards to updating/annotating the draft Unacceptable Behaviours Policy.

Any other business

There were no other items of business raised.

Date of Next Meeting

Agreed: The date for the next meeting of the Group will be Thursday 3 March 2022.

The meeting was adjourned at 4.09pm.

John Blair MLA
Chairperson
Unacceptable Behaviours Policy Working Group

Working Group on Unacceptable Behaviours Policy

Minutes of Meeting

3 March 2022

Meeting Location: Microsoft Teams

Present by Video or Teleconference:

John Blair MLA (Chairperson)

Linda Dillon MLA

Pam Cameron MLA

Apologies:

Robbie Butler MLA

Dolores Kelly MLA

In Attendance by Video or Teleconference:

Shane McAteer (Clerk of Standards)

Karen Martin (Deputy Head of Human Resources)

Marie Austin (Senior Assistant Assembly Clerk)

Karen Barry (Assistant Assembly Clerk)

The meeting commenced at 2.36pm

Apologies

Apologies are detailed above.

Declaration of Members' Interests

Members were advised of the need to declare any relevant interests as and when they arise in discussions of the Group as applicable.

Draft Minutes of the last meeting

Agreed: The Group agreed the minutes of the meeting held on Thursday, 27 January 2022

Matters Arising

The Group noted that written responses on the draft policy were received from Pam Cameron, on behalf of the Democratic Unionist Party, and from Linda Dillon, on behalf of Sinn Féin.

The Group noted that informal feedback was provided to the Secretariat from the Chairperson, on behalf of the Alliance Party, and from Robbie Butler, on behalf of the Ulster Unionist Party.

The Group noted that, in order to facilitate the aforementioned responses, the Clerk of Standards and the Deputy Head of Human Resources met with the respective members/parties to discuss and clarify issues raised and the draft policy was subsequently amended to take account of the feedback received from the parties represented on the Group.

The Group noted that Robbie Butler had advised the Clerk of Standards that he is content with the changes made in relation to the handling of complaints against MLA staff and the amended definition of bullying. He further advised that he is broadly content with the draft policy and report overall.

Consideration of draft report on Unacceptable Behaviours Policy

Karen Martin, Deputy Head of Human Resources, and Shane McAteer, Clerk of Standards, presented a draft report setting out the outcome of the Group's policy development work, including a draft policy and appendices.

The Group noted various suggested minor and consequential amendments which had been identified after the draft report was issued to members.

Members undertook formal consideration of the draft report as follows:

Agreed: The Group agreed that pages 1 to 3, including the Title Page (subject to an amendment), Table of Contents page and List of Abbreviations, stand part of the report.

Agreed: The Group agreed that paragraphs 1 to 8, which include the 'Background' section, stand part of the report.

Agreed: The Group agreed that paragraphs 9 to 12, which include the 'Policy purpose and scope' section, stand part of the report.

Agreed: The Group agreed that paragraphs 13 and 14, which include the 'Policy principles' section, stand part of the report.

Agreed: The Group agreed that paragraph 15, which introduces the 'Issues and options considered' section, stands part of the report.

Agreed: The Group agreed that paragraph 16, which includes the 'Unfair and vexatious complaints' section, stands part of the report.

Agreed: The Group agreed that paragraphs 17 to 19, which include the 'Complaints timeframe' section, stand part of the report.

Agreed: The Group agreed that paragraphs 20 to 23, which include the 'Behaviour Code and Conduct for Members' section, stand part of the report.

Agreed: The Group agreed that paragraphs 24 to 30, which include the 'Informal resolution of complaints' section, stand part of the report.

Agreed: The Group agreed that paragraphs 31 to 39, which include the 'Investigation of complaints' section, subject to a clarificatory amendment to paragraph 35, stand part of the report.

Agreed: The Group agreed that paragraphs 40 to 50, which include the 'Consideration of investigation reports and imposition of sanctions' section, subject to minor and consequential amendments, stand part of the report.

Agreed: The Group agreed that paragraphs 51 to 54, which include the 'Appeals' section, stand part of the report.

Agreed: The Group agreed that paragraphs 55 to 60, which include the 'Confidentiality' section, subject to a clarificatory amendment to paragraph 59, stand part of the report.

Agreed: The Group agreed that paragraphs 61 to 64, which include the 'Anonymity in a complaint raised under the Policy' section, stand part of the report.

Agreed: The Group agreed that paragraphs 65 to 71, which include the 'Further issues' section, stand part of the report.

Agreed: The Group agreed that paragraph 72, which contains the 'Recommendations' section, subject to minor amendments, stands part of the report.

Agreed: The Group agreed that the annex containing the 'Draft Unacceptable Behaviours Policy', subject to minor and consequential amendments, stands part of the report.

Agreed: The Group agreed that the 'Appendix 1', which includes the Minutes of Proceedings relating to the Report, stands part of the report.

Agreed: The Group agreed that the 'Appendix 2', which includes responses from political parties to the draft policy, stands part of the report.

Agreed: The Group agreed that the 'Appendix 3', which includes links to the relevant research papers, stands part of the report.

Agreed: The Group agreed that the 'Appendix 4', which includes proposed revisions to MLA Code of Conduct, stands part of the report.

Agreed: The Group agreed that Chairperson will approve the Minutes of Proceedings from today's meeting and that these will be included within Appendix 1 of the report.

Next Steps

Agreed: The Group agreed to forward the 'Report on the development of an Unacceptable Behaviours Policy' to the Committee on Standards & Privileges and to the Assembly Commission, with a view to the applicable proposals being agreed in principle before the end of the current mandate and final agreement and implementation being taken forward early in the next mandate.

Agreed: The Group agreed to request that the Committee on Standards & Privileges publishes the report on its webpages in the meantime.

Any other business

There were no other items of business raised.

The meeting was adjourned at 3.07pm.

**John Blair MLA
Chairperson
Unacceptable Behaviours Policy Working Group**

Appendix 2: Responses from political parties represented on the Group

Response from Democratic Unionist Party (DUP)

DUP Position Paper

Draft Unacceptable Behaviours Policy

Introduction

The Democratic Unionist Party supports the need for a fair and operable framework for discouraging and investigating unacceptable behaviour on the part of MLAs, their staff and Party employees in the course of Assembly business. We envisage such a policy being distinct from criminal proceedings or grievance procedures which address matters of staff performance or other contractual obligations.

It is important that any agreed model is capable of reflecting nuances between the different roles, avoids duplication and is compliant with basic freedoms of speech and expression, most notably in relation to the actions of MLAs whilst in the Assembly chamber. We would also highlight the need for scrutiny of current levels of complaints, and the impact of contrasting policies in other jurisdictions on reporting rates, in order to build an effective evidence base for any changes.

With these principles in view, we would provide the following feedback in the areas requested by the Working Group.

a. The definitions of the unacceptable behaviours as set out in the draft Policy

We are broadly supportive of the content of the proposed Behaviour Code outlined in paragraph 6 of the draft policy. Whilst we recognise the need to promote an environment where complainants feel comfortable reporting unacceptable behaviours, there is also a need to ensure this strikes the right balance in terms of maintaining productive working relationships. Moreover, it

may be necessary to explore whether the proposed obligation for MLAs or staff to *'speak up about any unacceptable behaviour that you experience'* should also extend to unreasonable behaviour they believe others have experienced. This is also to paragraphs 24 and 25 which provides guidance on what to do in the event someone is subject to unacceptable behaviour.

The absence of any provision exempting frivolous or vexatious complaints from the remit of the policy should be addressed going forward and this should capture spurious claims against constituency office staff.

Paragraphs 11, 13, 18, 19 and 20 would place *'offensive'* conduct and an *'creating an offensive environment'* in the scope of unacceptable behaviours. We are concerned that this term is quite ambiguous and could unduly infringe freedom of speech and expression. The Behaviour Code makes no reference to offensive behaviour. Actions may be offensive without constituting abuse, bullying or harassment. Instead, we feel there is a need for behaviour either to have clear intent to cause distress, or meet the threshold of unreasonableness, in order to come into conflict with the policy.

Paragraph 7 sets out an expectation that MLAs observe the principles of the Behaviour Code, including *'acceptance of responsibility.'* This obligation is not actually stipulated in the draft Code itself and requires further explanation. It is key that such a principle does not impinge on the right of a Member to defend him or herself from baseless accusations.

The DUP also believes the focus on *'an abuse or misuse of power'* in the definition of bullying outlined in paragraph 13 could indirectly exclude unacceptable behaviour by a staff member or employee against someone with equivalent authority. Bullying might be a means to gain power rather than an abuse of power already held. The referenced examples of bullying include *'unreasonable work demands.'* This seems at odds with the later derogation in paragraph which states that where *'an employer issues an instruction which an employee considers unreasonable...this should be pursued through the grievance procedure.'* It is crucial that employers and employees are clear about the appropriate vehicle for different categories of complaint.

In respect of harassment, the proposed definition would cover '*sending or displaying offensive material in any format, including images, graffiti, jokes that may intimidate or cause offence.*' There should be discretion in cases where material is displayed in evidently personal workplaces and party-political messaging should not be deemed to be actionable.

Aside from these concerns, the exceptions and clarifications contained in paragraphs 15 – 18 are an appropriate reflection of the need to ensure fair criticism, effective management and occasional lapses of courtesy or respect are not eligible for recourse through this Policy.

b. The provisions included in the draft Policy regarding the timeframe for complaints, including the transitional provision once the Policy has been introduced

We have no objections to the six-month timeframe proposed, albeit there will be a need to address any practical challenges that may arise as a result of assessing complaints lodged retrospectively to different standards to current allegations. It may be helpful if the policy stipulated more detail on the types of extenuating circumstances that would trigger a derogation from normal timeframes.

c. Whether the MLA Code of Conduct should be amended to make clear that the Behaviour Code is a Principle of Conduct; and that it is explained within the Policy that it is the Policy (in terms of the unacceptable behaviours as defined therein) that is enforceable in regard to Members, as opposed to the Behaviour Code. Also, whether Rule of Conduct 10 (see Annex A) should be amended to include a specific reference to the Policy, in order to highlight in the Code of Conduct the importance of the Policy.

The DUP recognises that the proposed amendments to the Code of Conduct are a genuine attempt to allay concerns regarding the potential for a new unreasonable behaviours policy that is applicable to Members to come into conflict with established practices governing behaviour the chamber. Despite this, we do not believe they would have the effect of fully negating the threat of disruption to the nature and balance of debate.

One of the suggested amendments involves making a stipulation in the Code that where is a conflict between the new policy and the Code of Conduct, the latter will apply. However, given that the only Rule of Conduct that seems

directly applicable to the outline Behaviours Policy relates to '*unreasonable or excessive personal attack*' this safeguard is limited and in theory will not prevent the new Policy from having effect in the chamber with regard to actions that are not deemed to have a personal element – of which there are many. Indeed, the definition of unacceptable behaviour refers to any conduct that has the '*purpose or effect*'...of creating an '*intimidating, hostile...or offensive environment.*' It can be reasonably argued that parliamentary debate is by nature often intimidating and hostile. Members from different factions may regard the views of their opponents as offensive. This does not automatically mean behaviour has been unacceptable or unreasonable. We would urge the Working Group to reassess whether the application of the policy as defined strikes the right balance in this regard.

d. Whether complaints against MLA staff should be investigated by: the Commissioner; an independent investigator appointed by the employing Member; or a procured independent investigation service (see paragraphs 21 – 28); and

The DUP does not believe the future remit of the Assembly Commissioner for Standards should include investigating complaints against MLA staff. In our view this should remain the responsibility of the Member to whom that member of staff is contracted, in line with the system operated in the Welsh Assembly. We are not convinced that the extension of this function to the Commissioner, which would require legislative change, is in keeping with the original intent of that Office to encourage and promote high ethical standards in public life. Transferring this function may disrupt and delay the Commissioner's pre-existing workload.

We do, however, recognise the concern around independence and accountability within processes MLAs operate to deal with unacceptable behaviour. One possible solution to this would be for an MLA to establish a separate complaints procedure governing unacceptable behaviours that specifies a named individual (or individuals) with suitable independence to hear such complaints. This could align with, or be absorbed by, the existing process for grievance procedures relating to MLAs staff. It would also create a clear line of accountability and avoid the complexity of varying processes for different types of complaint.

The proposed transfer of investigations against MLA staff to the Standards Commissioner would also create an inequality in the system given that political parties would still be responsible for receiving complaints against party staff. In some cases, political staff employed by a Party are employed simultaneously by an MLA. Operating two distinct processes for investigating complaints against the same member of staff, in theory depending on where and when such behaviour is alleged to have occurred, would be confusing and give rise to concerns of unfair treatment.

- e. **Whether the Group should recommend to the Committee that, following consultation and consideration of the proposed reforms, it seeks amendments to the necessary procedures (in Standing Orders and the General Procedures Direction) to, amongst other things:**
- **widen the scope of the rectification procedure to enable minor breaches of the Policy to be resolved informally under the procedure (paragraphs 14 – 20)**

The DUP would be in favour of extending access to the rectification procedure for alleged minor breaches of the unacceptable behaviours policy. The Standards and Privileges Committee should retain authority on deciding whether a case is suitable for rectification.

Separately we would seek clarity on that level of powers the Standards Commissioner would have to request information from witnesses to alleged behaviour.

- **require both the complainant and respondent to sign a confidentiality agreement at the outset of the process; and for the Commissioner/Committee, where they have reasonable grounds to believe that information has been disclosed, to decide to discontinue the investigation process (paragraphs 43-47);**

We believe it would be important to ensure this does not preclude cooperation with criminal proceedings or create a chilling effect on the reporting of legitimate complaints. Evidence from other jurisdictions might be a useful reference point.

- **provide that investigation reports pertaining to complaints against MLAs will be considered by a sub-committee of the Committee comprising the (proposed) three lay members of the Committee (paragraphs 29 – 35);**

Notwithstanding our wider concerns regarding the application of new draft policy to MLA behaviours in the Assembly chamber, we have no objection to the additional three lay persons envisaged under the provisions of NDNA being involved in complaints received under this policy. However, we are unclear why membership of the sub-Committee to hear complaints should be restricted solely to these lay members when the principle of NDNA commitments was to enhance rather replace the current membership of the Standards and Privileges Committee.

- **enable the Assembly, where applicable, to impose sanctions on a Member who has breached the Policy without the details of the complaint case being debated publicly in full plenary debate (paragraphs 38 – 39)**

We are supportive of this approach, particularly in circumstances the complainant requests that sensitive information relating to the case are not made public or the subject of debate. However, we also accept that the prospect of MLAs endorsing sanctions without fuller scrutiny must be carefully managed. There are also other routes by which members could seek to publicly expand on the details of a case, i.e members statements. Any agreed position needs to be applied in the round.

- f. **Whether the Group should recommend to the Committee that it consider (and consult the appropriate authorities on) whether there are sufficient arrangements in place to deal with unacceptable behaviour in the Chamber (paragraphs 52 – 54).**

The DUP believes debate within the Assembly and its Committees engage particular considerations regarding freedom of speech, expression and association that deserve separate and careful attention. There is a need to ensure robust debate and reasonable criticism of individuals and parties is not unjustifiably stymied by the introduction of a catch-all unacceptable behaviours framework. As noted previously, the proposed amendments to the Code of Conduct raise existing concerns, which would need to be addressed prior to any further consideration of these issues.

Response from Sinn Féin (SF)

Sinn Féin broadly support the draft policy on Unacceptable Behaviour Policy by the Working Group, and have set out below our views in relation to following options as requested by the Working Group.

1	The definitions of the unacceptable behaviours as set out in the draft Policy	Content
2	The provisions included in the draft Policy regarding the timeframe for complaints, including the transitional provision once the Policy has been introduced	Content
3	Whether the MLA Code of Conduct should be amended to make clear that the Behaviour Code is a Principle of Conduct; and that it is explained within the Policy that it is the Policy (in terms of the unacceptable behaviours as defined therein) that is enforceable in regard to Members, as opposed to the Behaviour Code, and the Rule of Conduct 10 should be amended to include a specific reference to the Policy, in order to highlight in the Code of Conduct the importance of the Policy, (see paragraphs 9 – 13)	Content
4	Complaints against MLA staff should be investigated by: the Commissioner; an independent investigator appointed by the employing Member; or a procured independent investigation service (see paragraphs 21 – 28)	This needs further discussion within the Working Group

5	<p>The Group should recommend to the Committee that, following consultation and consideration of the proposed reforms, it seeks amendments to the necessary procedures (in Standing Orders and the General Procedures Direction) to, amongst other things:</p> <ul style="list-style-type: none"> • widen the scope of the rectification procedure to enable minor breaches of the Policy to be resolved informally under the procedure (paragraphs 14 – 20); • require both the complainant and respondent to sign a confidentiality 	Content
5	<p>agreement at the outset of the process; and for the Commissioner/Committee, where they have reasonable grounds to believe that information has been disclosed, to decide to discontinue the investigation process (paragraphs 43-47);</p> <ul style="list-style-type: none"> • provide that investigation reports pertaining to complaints against MLAs will be 	Content
5	<p>considered by a sub-committee of the Committee comprising the (proposed) three lay members of the Committee; and</p>	Content
5	<ul style="list-style-type: none"> • enable the Assembly, where applicable, to impose sanctions on a Member who has breached the Policy without the details of the complaint case being debated publicly in full plenary debate; 	Content
6	<p>The Group should recommend to the Committee that it consider (and consult the appropriate authorities on)</p>	Content

	whether there are sufficient arrangements in place to deal with unacceptable behaviour in the Chamber.	
7	The Group gives further consideration to the draft Policy and to an accompanying report to the Committee at the next Group meeting on Thursday 3 March 2022, with a view to these being agreed for issuing to the Committee to consider before the end of mandate	Content

Appendix 3: RaISe papers

[Topical issues in other legislatures](#), (NIAR 19-2020)

[Unacceptable behaviours - update on developments in other legislatures](#), (NIAR 74-2021)

Appendix 4: Proposed revisions to MLA Code of Conduct (in red text)

The Additional Assembly Principles of Conduct

8. Equality: Members should promote equality of opportunity and not discriminate against any person, treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.
9. Promoting Good Relations: Members should act in a way that is conducive to promoting good relations by tackling prejudice, promoting understanding and respect and encouraging participation between people on the grounds of different religion, political opinion, race, gender, age, sexual orientation and disability.
10. Respect: Members should show respect and consideration for others at all time.
11. Good Working Relationships: Members should work responsibly with other Members of the Assembly for the benefit of the whole community. Members' working relationship with Assembly staff should at all times be professional, courteous and based on mutual respect.
12. **Behaviour Code: Members are expected to observe the principles set out in the Assembly Behaviour Code of respect, professionalism, understanding others' perspectives, courtesy and acceptance of responsibility.**

4. THE RULES OF CONDUCT

4.1 Members must abide by the following rules of conduct:

1. You shall base your conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

2. You shall uphold the criminal law. You fail to uphold the law only if you are convicted of, or admit formally, an offence committed when acting in your capacity as a Member.
3. You shall uphold the law in relation to equality. You fail to uphold the law in relation to equality only if a court or tribunal makes a finding against you, or you accept formally that you have breached the law, when acting in your capacity as a Member.
4. You shall register in the Assembly's Register of Members' Interests details of all registrable interests. A registrable interest means an interest specified in Chapter 1 of the Guide to the Rules. [The categories of registrable interest are set out in Schedule 1]
5. You shall declare, whether in Assembly proceedings or in any approach to a Minister, public representative, public body or public official, any relevant interest which might reasonably be thought by others to influence your approach to the matter under consideration. A relevant interest means an interest to which Chapter 2 of the Guide to the Rules applies, and may include a registrable interest.
6. You shall not accept any gift, benefit or hospitality that might reasonably be thought by others to influence your actions as a Member.
7. You shall not, in return for payment or benefit, advocate or initiate any cause or matter on behalf of any outside body or individual. Nor shall you, in return for benefit or payment, urge any other Member to do so.
8. You shall not seek to confer benefit exclusively upon a body (or individual), from which you have received, are receiving, or expect to receive a financial or material benefit, or upon any client of such a body (or individual).
9. You shall not misuse any payment, allowance or resources available to you for public purposes. You shall strictly observe the

requirements of any applicable determination made by any relevant body or by the Assembly Commission and any rules made by the Assembly Commission applying to these or any other payments, allowances and resources.

10. You shall observe and comply with the rules on all-party groups.
11. You shall observe and comply with any policy, guidance or instructions of any kind published on behalf of the Assembly or the Assembly Commission including, but not limited to, the Unacceptable Behaviours Policy. Where a matter is dealt with in both the Code of Conduct and any such publication, the Code of Conduct shall take precedence.
12. You shall use information which you receive in confidence only in your capacity as a Member. You shall never use, nor attempt to use, such information for the purpose of financial gain.
13. You shall disclose confidential or protectively marked information only when you are authorised to do so.
14. You shall not act in any way which improperly interferes, or is intended or is likely to improperly interfere, with the performance by the Assembly of its functions, or the performance by a Member, officer or staff of the Assembly of their duties.
15. You shall not use, or attempt to use, your position as a Member to improperly confer an advantage or preferential treatment for either yourself or any other person; or to avoid disadvantage or create disadvantage for someone else.
16. You shall not subject anyone to unreasonable and excessive personal attack
17. You shall co-operate at all times with any investigation by or under the authority of either the Northern Ireland Assembly Commissioner for Standards or the Assembly.

18. You shall not disclose details in relation to such an investigation except when authorised by law or by the investigatory authority.
19. You shall not lobby a member of the Committee on Standards and Privileges, or the Commissioner in a manner calculated or intended to improperly influence their consideration of whether a breach of the Code of Conduct has occurred.
20. You shall take reasonable care to ensure that your staff, when acting on your behalf, uphold these rules of conduct.
21. You shall, if approached by anyone to act in a way that would breach the Code of Conduct, report without delay details of the approach to the Committee on Standards and Privileges, and to any other appropriate authority.
22. You shall not urge another Member to contravene any rule of conduct.

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