



**Coimisiún um Chaighdeán in Oifigí Poiblí**  
**Standards in Public Office Commission**

**Procedures of the  
Standards in Public Office Commission  
in respect of its Complaints Process**

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## Introduction

1. The Standards in Public Office Commission (the “**Commission**”) is an independent statutory body which performs an important public function directed towards the establishment and maintenance of public confidence in the accountability of public representatives.
2. The following procedures (the “**Procedures**”) outline how a complaint will be managed from receipt of the complaint to the final decision of the Commission.
3. The Procedures are based on the provisions of the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001, (the “**Ethics Acts**”). Complaints in relation to members or employees of a local authority will involve consideration of Part 15 of the Local Government Act 2001, as amended (the “**LGA**”).
4. The Procedures have been prepared in accordance with Section 21(11) of the Ethics Acts which provides that “*the Commission shall determine, by standing orders or otherwise, the procedure and business of the Commission*”. The Procedures are at all times subject to the Ethics Acts and Part 15 of the LGA. The Ethics Acts and Part 15 of the LGA are available on the Commission’s [website](#).
5. In addition to adherence to the relevant legislation and Procedures, the Commission will act at all times in accordance with the principles of natural justice.
6. The Procedures have been approved by the Commission. The Procedures will be reviewed by the Commission every two years.
7. A glossary of terms used frequently in the Procedures are highlighted in bold with an explanation set out at Appendix 1.

## The Standards in Public Office Commission

8. The Commission consists of the Chairperson and five ordinary members. Its membership is determined by Section 2 of the Ethics Acts which provides for the following composition:
  - (i) a Chairperson who is a judge or former judge of the High Court or Supreme Court,
  - (ii) the Comptroller and Auditor General,
  - (iii) the Ombudsman,
  - (iv) the Clerk of Dáil Éireann,
  - (v) the Clerk of Seanad Éireann; and
  - (vi) a former member of one of the Houses of the Oireachtas.
9. The Chairperson is appointed to the Commission by the President of Ireland on the advice of the Government following resolutions passed by each House of the Oireachtas recommending the appointment. The former member of one of the Houses of the Oireachtas is appointed to the Commission by the Government following resolutions passed by each House approving the proposed appointment.
10. The role of the Chairperson is to be a member of the Commission and to chair the meetings of the Commission, in particular when it is considering complaints under the Ethics Acts. The Chairperson will ensure that meetings are conducted in accordance with the Ethics Acts and the Procedures.

### Commission Meetings

11. The quorum for a Commission meeting will depend on the matters under consideration. For most matters, the quorum must not be less than three members of the Commission. However, where the Commission is considering any matter relating to an investigation under Section 23 of the Ethics Acts, the full composition of the Commission is required i.e. the Chairperson and the five ordinary members. See pg. 13 for further information on an investigation under Section 23 of the Ethics Acts.
12. Meetings of the Commission take place in private.
13. The Commission is supported in its work by the Secretariat to the Commission. The Secretariat performs tasks on the Commission's behalf in order to assist it in carrying out its functions under the Ethics Acts. The Secretariat is available to provide assistance to the Commission during its meetings. The Secretariat does not take part in the decision-making process of the Commission and only attends a Commission meeting in respect of the area of work they are responsible for.
14. At the request of the Commission, a legal advisor may also be present at a Commission meeting in order to provide legal advice to the Commission and the Secretariat regarding any aspect of its functions.
15. The Commission members, in advance of considering a matter, will inform the Secretariat of any conflicts of interest. This means that a member of the Commission, including the Chairperson, should not have a material interest, or be reasonably perceived as having a material interest, in the consideration of a particular matter. The Secretariat will also ensure that

documentation relating to the matter will not be sent to the member of the Commission who declared a conflict of interest. If a conflict of interest arises during the complaints process for either a Commission member or the Chairperson, the individual in question will withdraw from any consideration in respect of the matter. In circumstances where the matter proceeds to an investigation pursuant to Section 23 of the Ethics Acts, despite the conflict of interest, the quorum of the full composition of the Commission is still required. As the Commission member and / or Chairperson is temporarily unable to act due to the conflict of interest, the Ethics Acts allows for the Minister to appoint a replacement member or Chairperson for the duration of the inability to act.

## Types of Complaints considered by the Commission

### 16. Complaints under Section 4 of the Ethics Acts

Anyone can make a complaint under section 4 of the Ethics Acts to the Commission where it relates to a Specified Person. A Specified Person includes the following:

- (i) A person who is, or at the time to which the complaint concerned relates was, an **Office Holder** or the holder of the office of Attorney General. This includes a Minister of the Government and/or a Minister of State but excludes a member of Dáil Éireann or a member of Seanad Éireann.
- (ii) A person who is, or at the time to which the complaint relates was, a **Special Adviser** or held a **Designated Directorship** of, or occupied a **Designated Position**, in a public body.
- (iii) A person who, presently or at the time to which the complaint relates, holds or occupies a directorship or a position of employment in a **Public Body**.

#### ***Types of Complaints under Section 4 of the Ethics Acts***

The following are Specified Acts which can be the subject of a complaint to the Commission as outlined:

- (i) A Specified Person or a person who, in relation to a Specified Person is a **Connected Person**,
  - a. may have done an act or omission which is inconsistent with the proper performance of the functions of the Specified Person; or
  - b. may have done an act or omission which is inconsistent with the functions of the office or position that person is in; or
  - c. the act or omission is inconsistent with the maintenance of confidence in such performance by the general public; and
  - d. the matter is one of **Significant Public Importance**.
- (ii) A Specified Person where the complainant is of the view the Specified Person may have breached their obligations under the Ethics Acts.
- (iii) A Specified Person where the complainant is of the view that the Specified Person may have breached the **Electoral Act 1997**, as amended.

#### ***Types of Complaints the Commission cannot consider***

The Commission cannot consider a complaint under Section 4 of the Ethics Acts if it relates to an act or omission of a Specified Person or a person who, in relation to a Specified Person, is a Connected Person, if:

- a) it relates to a private matter and it is not related to the functions of the office or the position of the Specified Person; or
- b) the act or omission results from incompetence or inefficiency in the performance or failure to perform the function of that Specified Person; or
- c) the complaint is frivolous or vexatious.

#### 17. Disclosure of Interests Complaint

The Ethics Acts require certain interests to be declared by Office Holders and certain public officials. Interests which are registrable interests for the purposes of the Ethics Acts are listed in the Second Schedule of the Ethics Acts, a copy of which can be found at Appendix 2 of the Procedures.

The following persons can make a complaint to the Commission about an alleged breach of the disclosure provisions under the Ethics Acts:

- (i) A member of the public;
- (ii) A member of Dáil Éireann or Seanad Éireann;
- (iii) The Minister for Public Expenditure and Reform;
- (iv) A Minister of the Government;
- (v) The **Appropriate Authority** in relation to a civil servant; and
- (vi) The Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann.

#### 18. Local Authority Complaints

Anyone can make a complaint against a local authority member, also known as a councillor, or employees of a local authority (which includes the Chief Executive Officer of the local authority), where it is considered that there has been a breach of Part 15 of the LGA and / or the Code of Conduct for Councillors or the Code of Conduct for Local Authority Employees. The relevant Codes of Conduct and Part 15 of the LGA are available on the Commission's website using the following links: [Codes of Conduct](#) and the [LGA](#).

19. Subject to exceptional circumstances, it is the procedure of the Commission that a local authority complaint may not be considered by the Commission until the complainant has first made the complaint to the **Ethics Registrar** of the relevant local authority. The Ethics Registrar has a number of statutory duties set out in Part 15 of the LGA. In particular, the Ethics Registrar has a duty to bring a complaint to the attention of the Chief Executive and / or the Cathaoirleach of the local authority for consideration. If the complainant is not satisfied with the actions taken by the local authority in considering its complaint, the complainant may then make its complaint to the Commission.

#### Anonymous complaints

20. The Ethics Act provides that the Commission shall not consider a complaint if the identity of the complainant is not disclosed. The Commission will consider a complaint to be anonymous if the full name, address and contact number of the person making the complaint is not provided.

## Protected Disclosures

21. The Protected Disclosures Act 2014 (the “**2014 Act**”) came into force on 15 July 2014. Its purpose is to protect workers from victimisation as a result of disclosing information regarding any relevant wrongdoing that has come to their attention during the course of their work. This is known as a protected disclosure. The 2014 Act applies to current and former employees, independent contractors, trainees and agency staff.
22. A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. In the first instance, a worker should make a protected disclosure internally to their employer, if possible. However, this step is not obligatory.
23. The 2014 Act also allows a worker to make a protected disclosure to the Secretary of the Commission. There is a higher standard in the event a worker makes a disclosure externally to the Secretary to the Commission than where the disclosure is made to the worker’s employer. The worker must reasonably believe that the relevant wrongdoing is within the remit of the functions of the Commission. The worker must also reasonably believe that the information disclosed, or any allegation contained in it, is substantially true.
24. A protected disclosure to the Secretary of the Commission must be in writing and contain the following:
  - (i) details of the worker’s name, position and/or role;
  - (ii) information, including facts, which tend to show the wrongdoing and what occurred;
  - (iii) all relevant dates and all other relevant details; and
  - (iv) the reasons for the concerns being raised.
25. Once a protected disclosure is made to the Secretary of the Commission, it is assessed to confirm it is within the scope of the Commission’s functions. The Commission can only investigate a disclosure in accordance with its legislation under the Ethics Acts. A protected disclosure will be examined by the Commission in the same manner as a standard complaint and as such, in accordance with its complaints procedures.
26. The main protection afforded by the 2014 Act is that reasonable steps must be taken by the Commission to ensure the identity of the worker is not disclosed. This is not absolute and there are a number of circumstances where the worker’s identity may have to be disclosed: for example, if it is necessary for the investigation of the wrongdoing. For further information on the protections afforded, please consult the 2014 Act.

## How to make a Complaint

27. The Ethics Acts provide that complaints made to the Commission must be in writing. The Commission cannot accept complaints made over the telephone. It requires the following information in order to be able to consider a complaint:

- (i) The full name, address and a contact number of the person making the complaint;
- (ii) The name of the person the complaint is about;
- (iii) As much information as possible about the circumstances of the complaint, including names, dates and places; and
- (iv) Any supporting documentation or material in relation to the circumstances of the complaint.

28. Any complaint should be sent by post using the address below or by email to [complaints@sipo.ie](mailto:complaints@sipo.ie).

Standards in Public Office Commission  
6 Earlsfort Terrace  
Dublin 2  
D02 W773

29. The Commission acknowledges that making a complaint can be stressful. Some complaints are complex and it may take some time to gather all the information required to reach a decision. The Commission will aim to keep the complainant informed at the following key stages of the complaints process:

- Decision has been made whether to close the complaint or to appoint an Inquiry Officer;
- Decision has been made whether to proceed to investigation;
- An investigation hearing date has been fixed;
- An investigation report is published.

30. In the event the Commission receives a complaint that relates to the work or the responsibility of another organisation, the Commission has a duty to let them know about it. For example, if a complaint raises a concern about the protection of children or a vulnerable person, the Commission is obliged to tell the relevant authority such as the Child and Family Agency, Tusla. Equally, if the Commission becomes aware of an alleged criminal offence, other than an offence pursuant to the Ethics Acts, it has a statutory duty to report the matter to An Garda Síochána<sup>1</sup>.

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<sup>1</sup> See [s.19 Criminal Justice Act 2011](#)

## Complaints Process

31. The process for examining complaints can involve a number of stages:

- Stage 1 – The Secretariat supports the Commission throughout the complaints process. The initial assessment of the complaint is carried out by members of the Secretariat, known as the Complaints and Investigations Unit (CIU). The CIU will establish whether the complaint is within the remit of the legislation and contains the necessary details referred to in the section ‘How to make a Complaint’.
- Stage 2 – Preliminary Inquiry – The Commission will consider the complaint and decide whether to appoint an Inquiry Officer to examine the full facts of the complaint. The function of an Inquiry Officer is to establish whether there is *prima facie* evidence to sustain the complaint.
- Stage 3 – Investigation – An investigation under the Ethics Acts is by way of an investigation hearing. At an investigation hearing, all available evidence is presented to the Commission in relation to the alleged complaint.

### Stage 1 – Initial Assessment

32. CIU will acknowledge all complaints received without delay, advising the complainant that their correspondence will be assessed and they will be contacted should further information be required. In some instances, it may be necessary to request additional information or seek clarification in relation to the complaint before it can be considered further. Any documentation provided to the Commission will not be returned to the complainant. The complainant will be provided with a copy of the Procedures.
33. CIU will assess whether the complaint is within the remit of the Ethics Acts and confirm that the complaint contains the necessary details as set out in the section ‘How to make a Complaint’.
34. In circumstances where knowledge of the complaint made to the Commission is in the public domain, and/or the respondent (specified person) is aware of the complaint, they will be notified of the fact that a complaint about them has been received by the Commission. The details of the complaint, including the identity of the complainant, will not be disclosed until such time as the Commission has considered the complaint and made a decision on whether or not to appoint an Inquiry Officer.
35. If the complaint is not within the Commission’s remit, the complainant, and the respondent if relevant (ie if they are aware of the complaint), will be informed accordingly.
36. All complaints that are considered to be within remit will be provided to the Commission for consideration.
37. Complaints referred to the Commission are discussed at their scheduled meetings. Having considered the information available, the Commission will decide whether or not to proceed to a preliminary inquiry (stage 2), or in certain circumstances to proceed directly to an investigation hearing (stage 3). The Commission will not proceed to investigation (stage 3) if there is

insufficient evidence or if it is of the opinion that the subject matter of the complaint is not of sufficient gravity. In certain circumstances, the Commission may refer the complaint to an appropriate third party for consideration.

38. The complainant will be informed of the Commission's decision and the reasons for the decision.

## Stage 2 – Preliminary Inquiry

39. The purpose of a preliminary inquiry is to establish facts relating to the complaint.

40. The Commission may appoint an Inquiry Officer to carry out a preliminary inquiry into a complaint and to prepare a report in writing of the results of the inquiry. Section 6 of the Ethics Acts provides the Inquiry Officer with certain powers for the purposes of conducting an inquiry.

41. During the preliminary inquiry process, the following will occur:

- (i) The Inquiry Officer will inform the complainant and the respondent of the Commission's decision to conduct a preliminary inquiry. The purpose of a preliminary inquiry is, at the request of the Commission, to establish whether there is *prima facie* evidence to sustain the complaint.
- (ii) The Inquiry Officer will provide the respondent with
  - a copy of the complaint (save in exceptional circumstances) and copies of any statements provided by the complainant, and
  - a copy of the complaints procedure and the signed authorisation for the appointment of the Inquiry Officer to the complaint.
- (iii) The Inquiry Officer may ask the complainant if they would like to provide a statement in writing, or make a statement at a meeting with the Inquiry Officer, of the evidence in support of their complaint. The complainant is not required to do so and any such statement will be provided to the respondent and will form part of the Inquiry Officer's report.
- (iv) The Inquiry Officer may also ask the respondent to provide, if they so wish, a statement in writing or attend for interview with the Inquiry Officer in relation to the complaint. Any such statement will form part of the Inquiry Officer's report.
- (v) The Inquiry Officer may ask any other person whose evidence may be relevant to the inquiry to provide a statement in writing, or attend for interview, if they so wish, with the Inquiry Officer.

42. At the conclusion of the preliminary inquiry, the Inquiry Officer will prepare a report based on the information obtained, together with any statements and other relevant documents. The report will not contain any determinations or findings, but will, at the Commission's request,

include the Inquiry Officer's opinion as to whether there is *prima facie evidence* to sustain the complaint.

43. The Inquiry Officer's report will be provided to the Commission but will not be provided to any other party at this stage. If the complaint proceeds to an investigation, the report will be provided to the respondent.

#### Consideration of the Inquiry Report

44. The Commission will consider the report of the Inquiry Officer at a meeting held in private. The Commission does not make any findings at this stage. Its role is to determine whether there is sufficient evidence to proceed to an investigation.
45. The following decisions may be made by the Commission at this stage:
- (i) Investigate the complaint where it considers there is sufficient evidence to establish a *prima facie* case in relation to the complaint and it is appropriate in the circumstances to do so;
  - (ii) Dismiss the complaint where the subject matter of the complaint is not of sufficient gravity to warrant investigation;
  - (iii) Dismiss the complaint where it is of the view the complaint is frivolous or vexatious;
  - (iv) Refer the complaint to an appropriate third party where the subject matter of the complaint is not of sufficient gravity to warrant investigation: or
  - (v) Refer the complaint to an appropriate third party where the subject matter of the complaint is outside the remit of the Commission.

#### Own Initiative Complaints

46. In certain circumstances, the Commission can, of its own initiative, decide to carry out an investigation into a Specified Person where it is of the view that the person has contravened their obligations under the Ethics Acts. In making such a decision, the Commission will take into account all available information.
47. The Commission's decision, and the reasons for the decision, will be recorded and the respondent will be notified accordingly.

## Stage 3 – Investigation

### Pre-hearing Stage

48. In advance of the investigation hearing, a number of steps may be taken in order to prepare for an investigation hearing.
- a) A Statement of Alleged Contraventions will be prepared by the Secretariat. This is a document which sets out the allegations being made against the respondent. This will be sent to the respondent in advance of the hearing so that they are aware of the allegations being made.
  - b) The complaint will be further examined and relevant documentation will be gathered. This documentation may be sought by way of a direction, issued by the Chairperson of the

Commission, which formally requires a person to provide the documentation to the Commission within a specified timeframe. This is also known as a direction in writing for any person to make discovery on oath of any documentation that is or has been in the person's possession or control. If the direction is not complied with, it can be enforced by the High Court.

- c) The Secretariat may consider it appropriate to interview witnesses and take witness statements. The witness statement sets out the nature of the evidence the witness will give at the investigation hearing. The respondent will be provided with all witness statements in advance of the investigation hearing.
- d) A witness may be asked to attend the investigation hearing and give evidence in person. If necessary, the Chairperson of the Commission may direct a witness to attend to give evidence at the hearing.
- e) The Secretariat will inform the respondent and relevant parties / witnesses of the date, time and venue of the investigation hearing. Parties may be required to attend the hearing by direction of the Chairperson of the Commission, if necessary.
- f) The Commission may hold a hearing to consider any preliminary applications. A preliminary application can include an application for the hearing to be heard in private. The respondent must provide advance notice in writing of any application that it intends to make. A transcript of the preliminary application hearing will be provided to the respondent.
- g) The Commission will publish the details of the investigation hearing on its website in advance of it taking place.

### The Investigation Hearing

49. Investigation hearings and any applications before the Commission are generally held in public. Following a preliminary application and only in exceptional circumstances, the Commission has discretion to direct that a hearing be heard in private. A person who attends a private hearing of the Commission shall not disclose information obtained during the hearing. Disclosure of this nature, or of any information obtained in the course of the preliminary inquiry or investigation, is an offence under the Ethics Acts.

#### Who attends the Investigation Hearing?

- (i) The Commission (all six members);
- (ii) The respondent and his or her legal representatives (if legal representatives are instructed);
- (iii) Legal representatives of the Commission;
- (iv) Staff and advisors of the Commission;
- (v) Witnesses;
- (vi) Stenographer;
- (vii) The public; and
- (viii) Members of the press and media

What happens at the Investigation Hearing?

50. Preliminary applications may be made at the outset of the investigation hearing by the parties present, which will require a determination by the Commission. Any procedural matters will also be dealt with by the Chairperson of the Commission at the beginning of the investigation hearing.
51. At the beginning of the hearing, the Commission's legal representatives will present the case and set out the Statement of Alleged Contraventions made against the respondent.
52. The Commission's legal representatives will then go through the evidence in relation to the Statement of Alleged Contraventions. Relevant witnesses will be called to give evidence. The respondent or their legal representatives can cross-examine the witnesses called by the Commission.
53. It is then the turn of the respondent or their legal representatives to present their evidence and call their own witnesses. Any witnesses called may be cross-examined by the Commission's legal representatives. The respondent may give evidence if they so wish, however they are not obliged to do so. Evidence is given under oath or affirmation.
54. The Commission may also question the witnesses or seek clarification on any matter that arises during the investigation hearing.
55. Written statements and other records may be admitted into evidence without further proof where agreed by all parties.
56. Investigation hearings are recorded by a stenographer and transcripts are prepared as a formal record of the proceedings.
57. In general an investigation hearing may proceed for approximately one or two days, however, some can go on longer depending on the complexity of the complaint.

The role of the witness

58. The Commission can require a witness to give evidence under oath or affirmation.
59. Witnesses are required to co-operate with the proceedings. A person who does not co-operate may be guilty of an offence – see pg. 17 for further information.
60. A witness who attends an investigation hearing may be entitled to reasonable vouched expenses to be determined by the Commission. The Commission has issued guidelines in respect of witness expenses, a copy of which can be found at Appendix 3.
61. A witness who gives evidence at a hearing is generally entitled to the same privileges and immunities as a witness in the High Court.

## Discontinuance or Postponement of an Investigation

62. The Commission may decide at any time to discontinue an investigation for various reasons including where it is of the opinion that the complaint concerned is frivolous or vexatious. In such circumstances, the Commission will outline the reasons for its decision in writing and will provide it to the complainant and the respondent.
  
63. In certain circumstances, the Commission may decide to adjourn or postpone proceedings in relation to an investigation including where criminal proceedings in respect of the complaint are initiated or ongoing. The Commission will record their reasoned decision in writing in respect of an adjournment or postponement.

## What happens after an Investigation Hearing?

### Investigation Report

64. After an Investigation Hearing, the Commission is required to prepare a written report which sets out the findings of the Commission together with its determinations in relation to:
- a) whether there has been a **Contravention**, as listed in the Statement of Contraventions, and whether the Contravention is continuing; and in the event there has been a contravention:
    - (i) if the determination is that the Contravention is continuing, the steps required to be taken to secure compliance, and the period of time within which such steps should be taken;
    - (ii) whether the Contravention was committed inadvertently, negligently, recklessly or intentionally;
    - (iii) whether the Contravention was, in all the circumstances, a serious or a minor matter; and
    - (iv) whether the person being investigated acted in good faith and in the belief that his or her action was in accordance with guidelines published or advice given in writing by a Committee under section 12 or by the Commission under section 25 of the Ethics Acts.
  - b) Whether there is no, or insufficient, evidence of a Contravention, whether the Commission is of opinion that the complaint made was frivolous or vexatious or that there were no reasonable grounds for it.
65. The Commission must be satisfied to the civil standard of proof (satisfied on the balance of probabilities) in finding that a contravention listed in the Statement of Contraventions was committed.
66. The Commission's report is furnished to:
- the respondent;
  - the complainant;
  - the Cathaoirleach and the Chief Executive of a local authority (where a complaint relates to a member and/or employee of the local authority). This is then considered by the local authority. The local authority may take action it deems appropriate including, in the case of a Chief Executive Officer this can include suspension or removal from the local authority; and
  - the Minister for Public Expenditure and Reform.
67. Under the Ethics Acts, the Commission shall also furnish its report to the DPP where it is of the opinion the person the subject of an investigation may have committed an offence relating to the performance of his or her functions.
68. The report is also published on the Commission's website.

## Costs

69. The Commission may decide to make an order for costs. An order for costs may also be made by the Commission following an application by a person appearing at the investigation hearing. The Commission can order the payment of the investigation hearing costs in whole or in part to a particular person to be paid by a particular person or entity including the Minister for Finance. In making an order for costs, the Commission will consider its findings of the investigation hearing and all other relevant matters to include failure to cooperate with, or provide assistance to, the Commission. The Commission will also consider whether false or misleading information was knowingly provided to the Commission. Overall, the Commission must be satisfied there are sufficient reasons to make it equitable to issue the order for costs.

## Offences under the Ethics Acts

70. There are a number of offences relating to investigation hearing proceedings:

- failure to co-operate with the Commission. This can include refusal to attend before the Commission, refusal to take the oath or affirm, refusal to answer questions, refusal or failure to produce or send any item requested by the Commission, or any other action or inaction which in a court would be regarded as contempt;
- the offence of perjury, i.e. giving false evidence to the Commission in such circumstances that, if the person had given the evidence before a court, he or she would be guilty of perjury;
- disclosure of information obtained under the Ethics Acts or by being present at a sitting of the Commission held in private;
- hindering or obstructing the work of the Commission, or the work of a member of its staff or of an Inquiry Officer.

71. Any person who is found guilty of an offence, on summary conviction, would be liable to a fine of up to €1,250 and/or a term of imprisonment of up to 6 months and, on conviction on indictment, to a fine of up to €25,000 and / or a term of imprisonment of up to 3 years.

## Other Information You Should Know

### What happens if I withdraw my complaint?

72. You may apply, in writing, to the Commission to withdraw your complaint. The Commission will consider your request. If the Commission is of the view that the complaint is of sufficient gravity and public importance it may allow you to withdraw the complaint but it may decide to commence an 'own initiative investigation' regarding the matter (see section entitled '*Own Initiative Complaints*').

### Can I appeal the decision of the Commission following an Investigation hearing?

73. The Ethics Acts do not provide for an appeal to the courts in respect of the Commission's decision following an investigation hearing. There is no appeal mechanism during any stage of the complaints process.

### Can I contact the Commission for advice?

74. If the complaints process is underway in respect of a complaint, the Commission cannot provide advice to the complainant, respondent or any other party involved. The Secretariat to the Commission are happy to assist any party to a complaint as best they can with any questions.

### Do I require a Solicitor?

- i. if I wish to make a complaint, or,
  - ii. if I am the subject of an investigation?
75. i. You do not need a solicitor to make a complaint.
- ii. In circumstances where you are the subject of an investigation by the Commission you are entitled, if you wish, to be legally represented at the hearing.

## APPENDIX 1 - GLOSSARY

### Appropriate Authority

As provided for by Section 2(1) of the Civil Service Regulation Act, 1956, as amended by [Section 6 of the Civil Service Regulation \(Amendment\) Act 2005](#):

Section 2(1):

- (a) in relation to a civil servant-
  - i. holding a position to which that civil servant was appointed by the Government, or
  - ii. holding a position as a Commissioner of the Revenue Commissioners pursuant to Article 7 of the Revenue Commissioners Order 1923, the Government,
- b) in relation to a civil servant who is of the grade of Principal or of an equivalent or superior grade to whom paragraph (a) does not apply, the Minister of the Government by whom the power of appointing a successor to that civil servant would for the time being be exercisable,
- c) in relation to a civil servant below the grade or rank of Principal or an equivalent grade, the Secretary General of the Department or the Head of the Scheduled Office in which the civil servant is serving,
- d) in relation to a civil servant holding a Ministerial Private Office appointment and who provides a service to a Minister of the Government, the Minister of the Government to whom that service is provided, and
- e) in relation to a civil servant holding a Ministerial Private Office appointment and who provides a service to a Minister of State, the Minister of State to whom that service is provided.

Section 2(2) Notwithstanding subsection (1), in this Act ‘appropriate authority’ means –

- a) in relation to a civil servant who is the Secretary General of the Office of the Houses of the Oireachtas or the Clerk-Assistant of Dáil Éireann, in respect of matters directly related to the business of Dáil Éireann, the Chairman of Dáil Éireann, in all other respects, the Houses of the Oireachtas Commission,
- b) in relation to a civil servant who is the Clerk or Clerk-Assistant of Seanad Éireann, in respect of matters directly related to the business of Seanad Éireann, the Chairman of Seanad Éireann, in all other respects, the Houses of the Oireachtas Commission,
- c) in relation to a civil servant who is the Superintendent, Houses of the Oireachtas or the Captain of the Guard, Houses of the Oireachtas—
  - (i) in respect of matters directly related to the business of Dáil Éireann, the Chairman of Dáil Éireann,
  - (ii) in respect of matters directly related to the business of Seanad Éireann, the Chairman of Seanad Éireann,
  - (iii) in all other respects, the Houses of the Oireachtas Commission,
- d) in relation to a member of the staff of the Houses of the Oireachtas Commission who is of the grade of Principal or of an equivalent or superior grade, the Houses of the Oireachtas Commission,
- e) in relation to a member of the staff of the Houses of the Oireachtas Commission below the grade or rank of Principal or an equivalent grade, the Secretary General of the Office of the Houses of the Oireachtas,

- f) in relation to a civil servant who is of the grade of Principal or of an equivalent or superior grade to whom subsection (1)(a)(i) does not apply, who is serving in the Office of the Secretary General to the President, the Taoiseach, and
- g) in relation to a civil servant below the grade or rank of Principal or an equivalent grade, who is serving in the Office of the Secretary General to the President, the Secretary General to the President.

#### **Connected Person**

- (i) a person is connected with an individual if that person is a relative of the individual,
- (ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual who or any of whose children or as respects whom any body corporate which he or she controls is a beneficiary of the trust,
- (iii) a person is connected with any person with whom he or she is in partnership,
- (iv) a company is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it,
- (v) any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

#### **Contravention**

A failure to comply with a law or rule.

#### **Designated Position**

In relation to a public body, means a *prescribed*\* position of employment in that body (public bodies for the purposes of the Ethics Acts are described below in this Glossary).

\**prescribed* means set down by regulations made by the Minister for Finance

#### **Designated Directorship**

In relation to a public body, means a *prescribed*\* directorship of that body.

**Electoral Act 1997, as amended** - can be found at this [link](#). It is an act to establish a constituency commission, to make provision for payments to political parties and candidates, to make provision for disclosure of donations for political purposes, to regulate expenditure at elections by political parties and candidates, to provide voting arrangements for certain persons unable to vote at polling stations and to provide for other electoral matters.

#### **Ethics Registrar**

Is a person or persons assigned by order of the manager for a local authority to perform the duties of an ethics registrar in accordance with section 174 of the LGA in respect of such authority or authorities as specified. Further information on the duties of the Ethics Registrar are available at [section 174 of the LGA](#).

### **Inquiry Officer**

The role of an Inquiry Officer is, on the direction of the Commission, to carry out a preliminary inquiry under Section 6(2) of the Ethics Acts into a complaint made to the Commission. The Inquiry Officer must then prepare a report in writing of the results of that inquiry and furnish that report and any statements or relevant documents to the Commission. If directed by the Commission, the Inquiry may also provide an opinion as to whether there is *prima facie* evidence to sustain the complaint.

### **Office Holder – means**

- a) A person who is a Minister of the Government or Minister of State
- b) A member who holds the office of the Attorney General
- c) A person who is Chairman or Deputy Chairman of Dáil Éireann or Chairman or Deputy Chair of Seanad Éireann; and
- d) A person who holds –
  - a. The office of chairman of a committee of either House, being an office that stands designated for the time being by resolution of that House, or
  - b. The office of chairman of a joint committee of both Houses, being an office that stands designated for the time being by resolution of each House.

**Prima Facie Evidence** means there is sufficient evidence to establish basic facts of a complaint but that this can be refuted.

**Public Body** a list of public bodies is set out in the [First Schedule of the Ethics Act](#) and also in any Regulations made thereunder.

**Significant Public Importance** is interpreted under the Ethics Acts as:

Without prejudice to the generality of its meaning within Section 4(1) of the Ethics Acts, a matter shall, if the Commission considers it appropriate to do so, having regard to all the circumstances, be deemed by it to be of significant public importance if it relates to a benefit alleged to have been received by a Specified Person or a person who, in relation to a Specified Person, is a connected person and, in the opinion of the Commission, the value of the benefit was, is or might have been or be expected to be or to become not less than €12,500.

**Special Adviser** means a person who;

- (a) occupies or occupied a position to which section 7(1)(e) of the Public Service Management (Recruitment and Appointments) Act 2004 relates, having been selected for appointment to that position by an office holder personally otherwise than by means of a competitive procedure, or
- (b) is or was employed under a contract for services by an office holder, having been selected for the award of the contract by an office holder personally otherwise than by means of a competitive procedure,

and whose function or principal function as such a person is or was to provide advice or other assistance to or for the office holder.

## APPENDIX 2 – REGISTRABLE INTERESTS - ETHICS ACTS

### Ethics in Public Office Act 1995 – Second Schedule

#### Registrable Interests

1. Each of the following interests shall be a registrable interest for the purposes of this Act:

(1) a remunerated trade, profession, employment, vocation or other occupation of the person concerned (other than that of office holder or member or an occupation to which Part IV applies) at any time during the appropriate period, in relation to that person, specified in section 5 (1) or 20 the remuneration from which to the person concerned during that period exceeded €2,600,

(2) a holding by the person concerned of shares in, or bonds or debentures of, or other like investments in, a particular company or other enterprise or undertaking if the aggregate value of the holding exceeded €13,000 at any time during the appropriate period aforesaid,

(3) a directorship or shadow directorship of any company held by the person concerned at any time during the appropriate period aforesaid,

(4) any interest in land of the person concerned, being an interest the value of which exceeded €13,000 at any time during the appropriate period aforesaid, including—

(a) the interest of the person in any contract entered into by him or her for the purchase of land, whether or not a deposit or part payment has been made under the contract, and

(b) the interest of the person in—

(i) any option held by him or her to purchase land, whether or not any consideration has been paid in respect thereof, or

(ii) land in respect of which such an option has been exercised by the person but which has not yet been conveyed to the person,

but excluding any interest in land consisting of any private home of the person or of his or her spouse or civil partner, that is to say, a building or part of a building that is occupied by the person or his or her spouse or a child of the person or of the spouse as a separate dwelling and any garden or other land usually occupied with the dwelling, being land that is subsidiary or ancillary to it, is required for its amenity or convenience and is not being used or developed primarily for commercial purposes,

(5) (a) a gift given to the person concerned during the appropriate period aforesaid, but excluding—

(i) a gift given to the person by a relative or civil partner or friend of the person or of his or her spouse or civil partner or of a child of the person or his or her spouse for purely personal reasons only, unless the acceptance of the gift by the person could have materially influenced him or her in the performance of his or her functions as a member, office holder, Attorney General, holder of a designated directorship, occupier of a designated position or special adviser, and

(ii) a gift given to the person, or gifts given to the person by the same person, during the period aforesaid, as respects which the value, or the aggregate value, of the property the subject of the gift or gifts did not exceed €650 at any time during the period aforesaid,

(b) (i) property supplied or lent or a service supplied to the person, once or more than once by the same person during the period aforesaid, for a consideration or considerations or at a price or

prices less than the commercial consideration or considerations or the commercial price or prices by more than €650, and

- (ii) property lent or a service supplied to the person, once or more than once by the same person during the period aforesaid, free of charge if the commercial consideration or considerations or the commercial price or prices was or were more than €650,

other than property supplied or lent or a service supplied to a person by a relative or civil partner or friend of the person or of his or her spouse or civil partner or of a child of the person or of his or her spouse where such supply or loan was in the nature of a gift to the person and for personal reasons only unless the acceptance of the property or loan or the service by the person could have materially influenced him or her in the performance of his or her functions as a member, office holder, Attorney General, holder of a designated directorship, occupier of a designated position, or special adviser,

- (6) travel facilities, living accommodation, meals or entertainment supplied during the appropriate period aforesaid to the person concerned free of charge or at a price that was less than the commercial price or prices, but excluding—

- (a) travel facilities, living accommodation, meals or entertainment provided—

- (i) within the State, or

- (ii) in the course and for the purpose of—

- (I) the performance of the functions of the person as a member, office holder, holder of a designated directorship, occupier of a designated position or special adviser, or

- (II) the trade, profession, employment, vocation or other occupation (other than an occupation specified in subclause (I)) of the person,

or

- (iii) in the case of a member, by the Inter Parliamentary Union (or such other (if any) similar bodies as may be specified by the Committee in guidelines published by it under section 12 ) or any organisation of states or governments of which the State or the Government is a member or a body of or associated with any such body or organisation,

- (b) travel facilities, living accommodation, meals or entertainment supplied to the person by a relative or civil partner or friend of the person or of his or her spouse or civil partner or of a child of the person or his or her spouse where such supply was in the nature of a gift given to the person for personal reasons only, unless the acceptance by the person of such facilities, accommodation, meals or entertainment might reasonably be seen to have been capable of influencing him or her in the performance of his or her functions as a member, office holder, Attorney General, holder of a designated directorship, occupier of a designated position or special adviser,

- (c) travel facilities, living accommodation, meals or entertainment supplied to the person, once or more than once by the same person during the period aforesaid, free of charge if the commercial price, or the aggregate of the commercial prices, of the facilities, accommodation, meals or entertainment did not exceed €650, or

- (d) travel facilities, living accommodation, meals or entertainment supplied to the person, once or more than once by the same person during the period aforesaid, at a price or prices less than the commercial price or prices by not more than €650,

- (7) a remunerated position held by the person concerned as a political or public affairs lobbyist, consultant or adviser during the appropriate period aforesaid,

(8) any contract to which the person concerned was a party or was in any other way, directly or indirectly, interested for the supply of goods or services to a Minister of the Government or a public body during the appropriate period aforesaid if the value of the goods or services supplied during the period aforesaid exceeded €6,500 or, in case other goods or services were supplied under such a contract as aforesaid to a Minister of the Government or a public body during the period aforesaid, if the aggregate of their value and the value aforesaid exceeded €6,500.

2. (1) In paragraph 1 (2), “holding” does not include money in a current, deposit or other similar account with a financial institution.

(2) In paragraph 1 (3), “shadow directorship” means the position held by a person who is a shadow director within the meaning of the Companies Acts, 1963 to 1990, or, in the case of a public body that is not a company (within the meaning of the Companies Act, 1963 ) and is specified in subparagraph (8), (9), (10), (11) or (12), or stands prescribed for the purposes of subparagraph (13), of paragraph 1 of the First Schedule , the position held by a person in accordance with whose instructions or directions the members of the body or the members of the board or other body that controls, manages or administers that body are accustomed to act.

## APPENDIX 3 – WITNESS EXPENSE GUIDELINES

Section 9 of the Ethics Acts provides for the payment of whole or part of the costs necessarily incurred by any person appearing before the Commission for the purposes of an investigation hearing. In general, it is expected that this would apply to any witnesses called by the Commission to give evidence during the hearing, which usually takes place at its offices.

The Commission will consider reimbursement of out-of-pocket expenses incurred by any ordinary witness as a result of having to give evidence. These expenses must be reasonable vouched expenses and could include;

- Travel expenses to / from the hearing venue\*
- Subsistence costs – overnight accommodation and meals
- Car Parking

Please note claims not supported by vouchers will not be paid.

If a witness thinks they may be entitled to any expenses, other than standard travel and subsistence costs, they must submit these for approval by the Commission in advance of the hearing. The Commission will consider any request for the payment of such expenses on an exceptional basis.

The Commission reserves the right to refuse to reimburse any expenses that are not properly vouched, and, in its opinion, are not reasonable or have not been incurred directly as a result of appearing as a witness.

\*Mileage for using a private car will only be paid where no suitable public transport is available. Every effort should be made to use public transport where possible. If using a private car, the claimant must explain why public transport could not be used on this occasion.