

Appendix 9

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HCS-579-14

**Alex Maskey MLA**  
**Chairperson**  
**Committee for Social Development**  
**Northern Ireland Assembly**

Our Ref: COR/58/14

9 October 2014

Dear Alex

Thank you for your letter of 29 September 2014, on which I have consulted officials within the Department of Finance and Personnel, who have policy responsibility for the Code of Conduct for Special Advisers. Within the context of the allegations made in a BBC Spotlight Programme against a former Special Adviser in the Department for Social Development, you have asked some questions concerning the fact-finding exercise carried out in this case and the process for disciplining Special Advisers generally. I will respond to your queries in the order you made them.

**Who within government departments has the responsibility to initiate such a fact-finding exercise in relation to Special Advisers?**

A fact-finding exercise was commissioned by the Permanent Secretary in DSD through the Department's HR Director following separate discussions with the DSD Minister and me. Where such an exercise was contemplated, this is the generic process which would be followed.

**Who subsequently has responsibility for the decision regarding any actions that should be taken based on the outcomes of the exercise, including whether a formal investigation should be initiated?**

This is the responsibility of the Minister, as the appointing authority.

**Description of the investigatory process**

I attach a link and would refer you to section 5 of this part of the NICS HR Handbook.

<http://www.dfpni.gov.uk/6.03-discipline.pdf>



**Who is responsible for initiating a fact-finding exercise; for deciding whether a formal disciplinary investigation is required; and what flexibility does the decision-maker have in deciding whether a formal disciplinary investigation is required?**

All aspects of the disciplinary process are the responsibility of the Minister and any actions are at the discretion of the Minister.

**How, if at all, does the status of Special Advisers differ contractually from other temporary civil servants, particularly in relation to disciplinary matters?**

The contractual arrangements of Special Advisers differ from those of other temporary civil servants to the extent set out in the model contract (which includes the Code of Conduct for Special Advisers) appended to the Code Governing the Appointment of Special Advisers, available at:

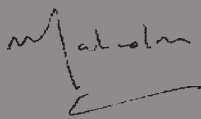
<http://www.dfpni.gov.uk/spad-act-13-code-of-practice-governing-the-appointment-of-spads.pdf>

The discipline policy as set out in the NICS HR Handbook applies to Special Advisers as it does to all other civil servants, permanent and temporary. However unlike temporary and permanent civil servants, the Minister is the appointing authority and the disciplinary authority. For temporary civil servants, other than Special Advisers, and for permanent civil servants the ultimate authority would be the Permanent Head of Department.

**Is there a formal procedure to be followed when a Minister chooses to act against the advice of a Permanent Secretary and subsequently instructs the Permanent Secretary to follow a course of action with which the Permanent Secretary disagrees?**

Managing Public Money NI sets out in paragraphs 3.4.1 to 3.4.6 a procedure which should be followed where a Minister decides to continue with a course which the Permanent Secretary as accounting officer has advised against. This process arises where the decision has financial implications.

I hope that you and the Committee find this information helpful.



**MALCOLM McKIBBIN**  
Head of the Northern Ireland Civil Service