



Coimisiún um Chaighdeán in Oifigí Poiblí  
Standards in Public Office Commission

# Procedures of the Standards in Public Office Commission in respect of Complaints and Investigations under the Ethics Acts

Revised and updated, April 2026

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# Introduction

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1. The Standards in Public Office Commission (the “**Commission**”) is an independent statutory body with responsibility for oversight of the standards required of public officials under the Ethics in Public Office Act 1995 (“the **1995 Act**”) and the Standards in Public Office Act 2001 (“the **2001 Act**”), which are together known as the “**Ethics Acts**”. Under the Ethics Acts, the Commission is charged with considering complaints and carrying out investigations into whether public officials are acting consistently with their public functions and with the maintenance of public confidence in the performance of those functions.
2. These procedures (the “**Procedures**”) summarise how the Commission will carry out its functions in relation to ethics complaints and investigations, pursuant to section 21(11) of the 1995 Act. The Procedures are at all times subject to the Ethics Acts and, in relation to local government members and employees, Part 15 of the Local Government Act 2001. Consolidated versions of the legislation are available on the website of the [Law Reform Commission](#).
3. These Procedures have been approved by the Commission and will be reviewed from time to time, as required. These Procedures do not deal with every eventuality and the Commission may depart from the Procedures in appropriate circumstances, where it is fair to do so.

## The Standards in Public Office Commission

4. The Commission is made up of six Commissioners. The Chairperson, who is a judge or former judge of the Superior Courts, is appointed by the President on the advice of the Government, following resolutions passed by each House of the Oireachtas. A former member of one of the Houses of the Oireachtas is appointed as a Commissioner by the Government following resolutions passed by each Houses of the Oireachtas. The remaining Commissioners are appointed by virtue of holding offices as the Comptroller and Auditor General, the Ombudsman, the Clerk of Dáil Éireann, and the Clerk of Seanad Éireann. More information about the Commission’s members is available at <https://www.sipo.ie/en/organisation-information/a32be-members/>.
5. The Chairperson is responsible for chairing the meetings of the Commission, including when it is considering complaints under the Ethics Acts. The Chairperson has specific statutory powers in relation to the conduct of investigations under the Ethics Acts. The Commission may also decide to delegate any of its functions to the Chairperson to perform on its behalf.
6. In respect of its ethics functions, the Commission’s decisions are usually made at meetings of the Commission, although decisions delegated by the Commission to the Chairperson may be made at any time. Meetings of the Commission take place in private. 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.
7. The Commission is staffed by civil servants of the State. The Commission staff includes shared services operating under the auspices of the Office of the Ombudsman, including its accounting

officer, finance, human resources, communications, legal services and information technology. Members of the Commission's staff, including its legal advisers, attend Commission meetings to support the Commission and, if requested, to assist the Commission with any information or legal advice that it may require for the purpose of its deliberations. The Commission's staff also carry out administrative tasks on behalf of the Commission, including corresponding with complainants.

## The Commission's Ethics Functions

8. Under the Ethics Acts, the Commission is charged with considering complaints and, where appropriate, carrying out investigations into whether public officials are acting consistently with their public functions and with the maintenance of public confidence in the performance of those functions. The Commission may carry out an investigation **following a complaint** made or referred to it, or **on its own initiative** when it considers it appropriate to do so.
9. The Commission's remit under the Ethics Acts is confined to the acts and omissions of a '**specified person**' or a person who is a 'connected person' in relation to a specified person. A specified person is defined as:
  - A person who is currently, 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 Seanad Éireann or a member of Dáil Éireann who is not a Minister.
  - A person who is currently, 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.
  - A person who currently holds or occupies, or at the time to which the complaint relates held or occupied, a directorship or a position of employment in a Public Body.
10. **A specified person is an individual, not an organisation. The Commission can only consider acts and omissions of individuals, and not the acts or omissions of the organisation in which they are employed or for which they are responsible.** An indicative list of specified persons is available on the Commission's website [here](#). Persons may contact the Commission at [complaints@sipo.ie](mailto:complaints@sipo.ie) if they are unsure as to whether a specific individual is a specified person.
11. The Commission may consider carrying out an investigation into the conduct of a specified person or a connected person where:
  - The conduct may amount to a 'specified act' (see below);
  - The conduct may amount to a breach of the provisions in the 1995 Act on statements of interest;

- The conduct may amount to a breach of the person's obligations in respect of electoral finance under the Electoral Act 1997;
- In respect of local authority members and employees, the conduct may amount to a breach of Part 15 of the Local Government Act 2001.

12. A 'specified act' is defined in legislation as:

*"an act or made an omission... that is, or the circumstances of which are, such as to be **inconsistent with the proper performance** by the specified person **of [their] functions ... or with the maintenance of confidence in such performance by the general public, [where] the matter is one of significant public importance"**.*

13. The definition of a specified act does not include an act or omission which:

- relates to a private matter and is unrelated to the functions of the specified person's office or position, or
- results from incompetence or inefficiency in the performance of, or from failure to perform, such a function, on the part of the specified person.

## The nature of the Commission's role

14. The Commission's role under the Ethics Acts is inquisitorial in nature. This means that the Commission itself decides whether an investigation should be carried out and, if so, the nature and extent of any investigation. The Commission is not an adjudicator between parties (e.g. between a complainant and a respondent) or an advocate for any party.

15. In making a decision as to whether to carry out an investigation under the Ethics Acts, the Commission may take into account information provided by complainants or received from Oireachtas Committees, Ministers, public bodies or officials, as well as information in the public domain.

## Can protected disclosures be made about ethics matters?

16. A protected disclosure, under the Protected Disclosures Act 2014, is a disclosure of information which, in the reasonable belief of a worker, tends to show one or more relevant wrongdoings; came to the attention of the worker in a work-related context; and is disclosed in the manner prescribed in the Act.

17. The Secretary to the Commission is a prescribed person under the Protected Disclosures Act and can consider protected disclosures that fall within the Commission's remit. The Commission has a separate protected disclosures policy, which is available at <https://sipo.ie/en/collection/cb0b3-protected-disclosures/>.

18. If a report received by the Commission proceeds beyond the initial assessment stage under section

7A of the Protected Disclosures Act, and the subject matter falls within the Commissions ethics functions, the Commission will consider whether it is appropriate to take action to address the alleged wrongdoing in accordance with these Procedures. However, the Commission may modify these Procedures to take account of the specific obligations in relation to confidentiality and recording under the Protected Disclosures Act. For example, where a protected disclosure has been received anonymously but the Commission nonetheless has contact details for the reporter, the Commission may consider carrying out an investigation on its own initiative into the matter, while continuing to meet its feedback obligations in respect of the reporter.

# Part A: The Ethics Complaints Process

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## Who can make a complaint?

19. Anyone can make a complaint to the Commission about the conduct of a specified person. In addition, members of the Oireachtas, Ministers and public bodies may make certain kinds of complaint to the Commission, and certain complaints may be referred to the Commission by the Committees on Members' Interests.

## Who and what can complaints be made about?

20. Complaints may only be made about a **'specified person'** or a person who is a **'connected person'** in relation to a specified person. A specified person is defined as:

- A person who is currently, 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 who is not a Minister.
- A person who is currently, 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.
- A person who currently holds or occupies, or at the time to which the complaint relates held or occupied, a directorship or a position of employment in a Public Body.

21. **A specified person is an individual, not an organisation. The Commission can only consider acts and omissions of individuals, and not the acts or omissions of the organisation in which they are employed or for which they are responsible.**

22. A complaint may be made about the conduct of a specified person or a connected person where:

- The conduct may amount to a **'specified act'**;
- The conduct may amount to a breach of the provisions in the 1995 Act on statements of interest;
- The conduct may amount to a breach of the person's obligations in respect of electoral finance under the Electoral Act 1997;
- In respect of local authority members and employees, the conduct may amount to a breach of Part 15 of the Local Government Act 2001.

23. A **'specified act'** is defined in legislation as:

*“an act or made an omission... that is, or the circumstances of which are, such as to be inconsistent with the proper performance by the specified person of [their] functions ... or with the maintenance of confidence in such performance by the general public, [where] the matter is one of significant public importance”.*

24. The definition of a specified act does not include an act or omission which:

- relates to a private matter and is unrelated to the functions of the specified person’s office or position, or
- results from incompetence or inefficiency in the performance of, or from failure to perform, such a function, on the part of the specified person.

25. In relation to local authority members and employees, it is usually more appropriate for complaints to be made to the **Ethics Registrar** of the relevant local authority. The Ethics Registrar has statutory duties set out in Part 15 of the Local Government Act 2001 and may be best placed to consider and resolve complaints about the conduct of local authority employees or members. However, complainants are not prevented from making a complaint to the Commission, either in the first instance or if a complainant is not satisfied with the actions taken by the local authority in considering its complaint. If the Commission decides not to investigate a complaint against a local authority employee on the ground that it is not of sufficient gravity to warrant investigation by the Commission, the Commission has discretion to refer the matter to the Chief Executive of the local authority for consideration.

## How can a complaint be made?

26. Complaints to the Commission must be made in writing. The Commission cannot accept complaints made over the telephone. Complainants who require reasonable accommodation, on the grounds of disability, to make a complaint in writing should contact the Commission and reasonable assistance will be offered by the Access Officer, as appropriate.

27. Complaints to the Commission should be submitted on the Commission’s Complaints Form, available on the Commission’s website [here](#). Complainants who are unable to submit a digital complaint form may contact the Commission for a paper copy of the form, which may be submitted by post to the Standards in Public Office Commission, 6 Earlsfort Terrace, Dublin 2, D02 W773.

28. The following information must be provided when making a complaint:

- The full name and address of the person making the complaint;
- The name of the person the complaint is about, their title / position / role (if known) and the name of the organisation;
- A concise description of the alleged act(s) or omission(s) complained of, including names, dates and places; and

- Any supporting documentation or material in relation to the circumstances of the complaint.
29. The Commission is prevented by its legislation from considering any complaint if the identity of the complainant is not disclosed to it. If the full name and address of the person making the complaint is not provided, the Commission will consider the complaint to be anonymous and will not deal with it.
30. If a complainant has concerns about the disclosure of their identity as a complainant, this should be raised with the Commission's staff when the complaint is made, with details of the reasons for and the nature of those concerns. Where, having regard to all the circumstances, the Commission considers it appropriate to do so, it may restrict the disclosure of the identity of the complainant. Complainants should be aware that it is highly likely that it will be necessary to disclose their identity to the subject of the complaint and their legal representatives in all but the most exceptional cases.

## What do the Commission's staff do on receipt of a complaint?

31. The Commission's staff will acknowledge all complaints received without delay, advising the complainant that their complaint will be assessed. The complainant will also be provided with a copy of these Procedures.
32. Following receipt of a complaint, the Commission's staff may correspond with the complainant to seek further information, for example, to clarify the nature of the complaint or to obtain any evidence in support that the complainant may hold.
33. The Commission's staff will assess whether the complaint is a valid complaint, specifically:
- Whether the complaint contains the necessary details as set out in paragraph 28 of these Procedures; and
  - Whether the complaint is about a 'specified person'.
34. Where the complaint is not valid, the Commission's staff will notify the complainant that the complaint cannot be accepted by the Commission and explain the reason. Where appropriate, the Commission's staff may offer assistance to the complainant in making a valid complaint (for example, by requesting that the complainant identify a specified person).
35. Where a valid complaint has been received, the Commission's staff will notify the specified person (known as the '**respondent**') of the fact that a complaint about them has been received by the Commission. The complainant's full name and the details of the complaint will be provided to the respondent. The complainant's address and contact information will not be shared.
36. In the event that the Commission receives a complaint that relates to the work or the responsibility of another organisation, the Commission may have a separate statutory 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 may be obliged to tell a relevant authority such as the Child and Family Agency, Tusla. Similarly, if the Commission becomes aware of certain information regarding possible criminal offences, it may have a duty to report the matter to An Garda Síochána.

## What is the complainant's role in the complaints process?

37. The principal role of the complainant is to bring a matter to the Commission's attention. Where the complainant has specific information in relation to the subject matter of the complaint, the complainant should provide that information to the Commission for its consideration. Making a complaint to the Commission is not akin to bringing legal action against a respondent. The Commission's processes are inquisitorial, meaning that it is for the Commission to decide whether to investigate and, if so, the extent of the investigation. **As a result, the complainant's role in the Commission's process is limited.**
38. The Commission acknowledges that complainants have an interest in knowing the outcome of their complaint and that awaiting the Commission's decision may be difficult for a complainant. Some complaints are complex and it may take the Commission some time to gather all the information required to reach its decision. The Commission will aim to keep the complainant informed at the following key stages of the complaints process:
- Acknowledgement of receipt of the complaint;
  - Notification of a decision on initial assessment as to whether to close the complaint or to make further inquiries;
  - If the Commission decides to make further inquiries, notification of a decision following further inquiries as to whether to close the complaint or to proceed to investigation;
  - If the Commission decides to proceed to investigation, notification of the date and place of an investigation hearing;
  - If an investigation is carried out, notification of the publication of the Commission's report.
39. Complainants do not require legal representation to make a complaint to the Commission. However, if a complainant wishes to communicate with the Commission through a legal representative, they should provide their consent in writing for the legal representative to communicate on their behalf.

## Can complaints be withdrawn?

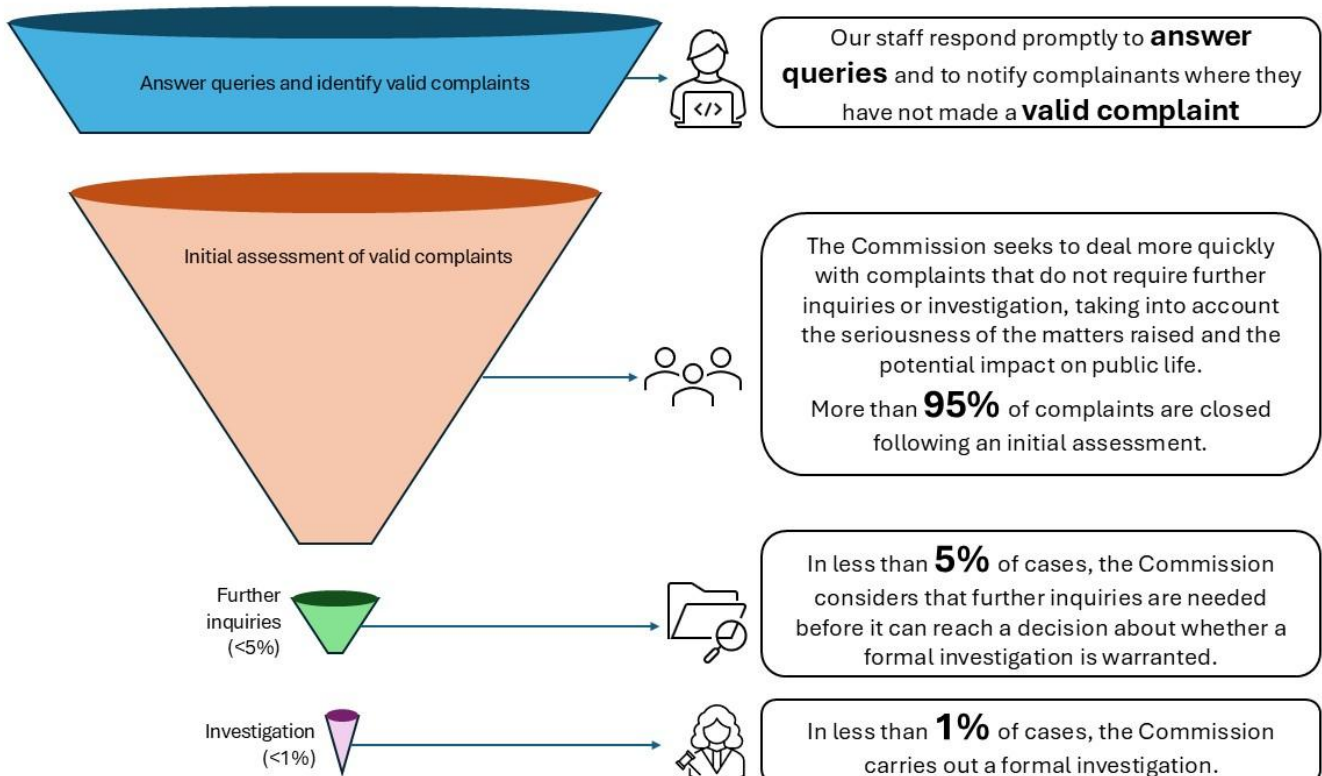
40. A complainant who no longer wishes to be involved in the process before the Commission may decide to withdraw their complaint. Any complainant wishing to do so should notify the Commission in writing of their intention to withdraw their complaint and their reasons for doing so. The Commission's staff may provide information to the complainant as to the likely process and invite the complainant to take time to consider their request before confirming withdrawal.

41. Where a complaint has been withdrawn, the Commission may nonetheless take into account the information that was submitted to the Commission as part of the original complaint, as the Commission may consider whether it should carry out an investigation on its own initiative (see ‘Part B: Own initiative investigations’). If the Commission decides to proceed on its own initiative, the former complainant will not be entitled to be notified of the investigation hearing. However, the Commission may obtain evidence from the former complainant, including through the exercise of its statutory powers, in the same manner as any other witness.

## How does the Commission deal with complaints?

42. The Commission gives detailed consideration to every complaint that is received. In the interests of fairness, the Commission aims to deal with all complaints as expeditiously as possible. The role of the Commission is to inquire into serious concerns about the standards of behaviour of persons in public life, where there is a reasonable prospect that an adverse finding might be supported following an investigation. The vast majority of complaints to the Commission (more than 95%) are dealt with by the Commission following an initial assessment. A small number of complaints (less than 5%) may require further inquiries before the Commission can reach a decision as to whether to investigate. In practice, the Commission proceeds to carry out a formal investigation in relation to a very small number (less than 1%) of the complaints received by it.

43. In summary, the Commission’s process for dealing with complaints is:



44. The Commission carries out an initial assessment of all valid complaints. Complaints are usually considered by the Commission at its scheduled meetings. However, the Commission may decide to

delegate responsibility for consideration of some complaints to the Chairperson of the Commission. Where this responsibility has been delegated, the Chairperson may reach a decision on behalf of the Commission on an initial assessment of the complaint. Decisions made by the Chairperson have the same status as decisions made by the Commission.

45. The Commission will receive a copy of the complaint and any associated documentation or material. The Commission's staff may prepare a briefing note summarising the complaint and/or draft correspondence, to assist the Commission in its deliberations. The Commission may request additional information or material from its staff, depending on the circumstances of the complaint.
46. There are **statutory grounds on which the Commission must decline to investigate a complaint, or may decline to investigate complaint**, about a specified person.
47. The Commission **must not investigate** a complaint about a specified act by a specified person if any of the following apply:
  - the matter is not, in the opinion of the Commission, of sufficient gravity to warrant investigation by the Commission;
  - the Commission considers the complaint to be frivolous or vexatious;
  - the Commission becomes of the opinion that the alleged act is not a 'specified act';
  - the Commission becomes of the opinion that there is insufficient evidence to establish a *prima facie* case<sup>1</sup> in relation to the alleged specified act; or
  - in relation to certain categories of specified person, unless the Commission is satisfied, following consultation with a Minister, that: (a) it is appropriate to carry out an investigation, and (b) an adequate investigation cannot or will not be carried out by the Minister or another body.
48. The Commission **may also decline to investigate** a complaint about a specified act if the Commission becomes of the opinion that evidence sufficient to sustain the complaint is not and will not be available.
49. Such matters are considered before a decision is made to proceed (or not to proceed) to a formal investigation, to ensure that the Commission's investigations are focused on matters that have the greatest potential impact on public life, and where there is a reasonable prospect that an adverse finding might be supported following an investigation.
50. Following its initial assessment, having considered the information available, and all of the circumstances, the Commission may:

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<sup>1</sup> This generally means sufficient evidence in support of an allegation that there is a real prospect of a finding being made following an investigation. While this is a lower standard of proof than proving a matter on the balance of probabilities, it nonetheless requires more than mere assertion of an allegation: there must be some cogent and credible evidence which corroborates the contention being made.

- **Close the complaint,**
- **Suspend the complaint** pending consideration by a third party, such as An Garda Síochána,
- **Obtain further information** in relation to the complaint and/or the surrounding circumstances (see 'Part C: Further Inquiries'), or
- In some limited circumstances, **proceed directly to an investigation** (see 'Part D: Investigations').

51. The Commission will usually provide its staff with detailed verbal reasons for its decision, with reference to the contents of any briefing note and/or associated documentation and materials. The Commission's staff will record the Commission's decision in the minutes and set out its reasons in correspondence with the complainant and the respondent.

52. The complainant and the respondent will be notified in writing of the Commission's decision as soon as practicable after the decision is made.

53. **Where the complaint is closed following initial assessment, this concludes the Commission's consideration of the matter.** There is no appeal in respect of the Commission's decisions to close complaints.

## Part B: Own initiative investigations

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55. The Commission can, on its own initiative, decide to carry out an investigation into a specified person where it considers it appropriate to do so. Any such decision is made at the discretion of the Commission.
56. There is no restriction on the manner in which the Commission may reach its decision to carry out an investigation on its own initiative. However, examples of where it might do so include:
- Where information about the conduct of a specified person was received by the Commission as part of a complaint that was subsequently withdrawn.
  - Where the Commission becomes of the opinion, during or at the conclusion of further inquiries or of a formal investigation, that the respondent may have committed additional contraventions.
  - Where the Commission becomes of the opinion, during or at the conclusion of further inquiries or a formal investigation, that the respondent has not committed the contravention or done the act as alleged, but may have committed a different contravention or done a different specified act.
  - Where information comes to the Commission's attention during the exercise of its functions (including in relation to electoral finance or lobbying matters, or through the receipt of a protected disclosure) and the Commission forms the opinion that the information indicates that a specified person may have committed a contravention or done a specified act.
57. When considering whether to investigate a matter on its own initiative, the Commission will take into account similar considerations to those taken into account when considering complaints. Such considerations include:
- Whether the matter is, in the opinion of the Commission, of sufficient gravity to warrant investigation by the Commission;
  - Whether the conduct is capable of amounting to a contravention or a specified act, including whether the matter is of significant public importance;
  - Whether there is sufficient evidence to establish a *prima facie* case in relation to the contravention or specified act;
  - Whether evidence sufficient to sustain a finding against the respondent is or will be available;
  - Whether the matter has been, or will be, appropriately dealt with or investigated in another forum.
58. The Commission may need to gather and collate evidence before reaching a decision as to whether it

is appropriate to carry out a formal investigation. While the statutory preliminary inquiry process does not apply to such inquiries, the Commission may seek the assistance of its staff to make further inquiries, following a similar process (see 'Part C: Further inquiries').

## Part C: Further inquiries

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59. In a small number of cases, the Commission requires further information to assist it to make a decision as to whether to carry out a formal investigation. The Commission could require further information following its initial assessment of a complaint, or when considering information on which it may carry out an own-initiative investigation. The Commission may request the assistance of its staff to make further inquiries.
60. The Commission may direct that its staff obtain specified information in relation to a complaint without the need for a statutory preliminary inquiry. In the case of complaints, the Commission may decide to request a statutory '**preliminary inquiry**', which is carried out by an '**inquiry officer**' following a process set out in legislation. An inquiry officer may be a member of the Commission's staff.
61. For ease of reference, these Procedures primarily refer to the process that will be followed during a statutory preliminary inquiry, carried out by an inquiry officer. However, a similar process will be followed in any case where the Commission requests further inquiries without a statutory preliminary inquiry. In all cases, the Commission will seek to act fairly, having due regard to the right of respondents to fair procedures.

### What process is followed when making further inquiries?

62. The aim of further inquiries (whether through a preliminary inquiry or otherwise) is to gather and collate evidence which would assist the Commission in its determination as to whether there is sufficient evidence to establish a *prima facie* case that the person has done a specified act, or otherwise failed to comply with their obligations under the Ethics in Public Office Act 1995, the Electoral Act 1997 or the Local Government Act 2001, as applicable.
63. To facilitate expeditious inquiries, the procedure for obtaining evidence may be informal and may include correspondence by email, without the need for a formal witness statement. Where a statement is obtained, it may be signed or the witness may be otherwise identified (for example, through their email signature).
64. A preliminary inquiry will usually follow this process:
- The inquiry officer will inform the complainant and the respondent of the Commission's decision to request a preliminary inquiry.
  - The inquiry officer will provide the respondent with:
    - a copy of the complaint (save in exceptional circumstances), and
    - a copy of the signed authorisation for the appointment of the inquiry officer.
  - The inquiry officer will ask any person who may have relevant evidence to provide a statement or to produce documentation, in writing or at an interview with the inquiry officer. This may include requesting a complainant to make such a statement, if the complainant may have relevant

evidence. This process is voluntary. Any person contacted by an inquiry officer may decline to comply with a request for a statement or to provide documentation.

- The inquiry officer will provide the respondent with copies of the statements and documents obtained by the inquiry officer. The inquiry officer will give the respondent an opportunity to provide a statement or to produce documentation, in writing or at interview, with the inquiry officer. This process is voluntary and the respondent may decline to comply with a request for a statement or to provide documentation.
- 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, if the Commission so requests, include the inquiry officer's opinion as to whether there is *prima facie* evidence to sustain the complaint.
- 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 Commission decides to carry out an investigation, the report will be provided to the respondent.

65. Where further inquiries are made without a preliminary inquiry, a similar process will be followed. The process may be adapted depending on the circumstances of the case, for example the Commission may decide that it is not necessary for a formal report to be prepared.

## How does the Commission make a decision after further inquiries?

66. The Commission will consider a preliminary inquiry report - or any equivalent report or information obtained on its behalf - at a meeting held in private and will determine whether to proceed to a formal investigation. The Commission will take into account all of the information provided to it, together with the surrounding circumstances as appropriate.

67. The Commission **must not carry out a formal investigation** where:

- the matter is not, in the opinion of the Commission, of sufficient gravity to warrant investigation by the Commission;
- the Commission considers a complaint to be frivolous or vexatious;
- the Commission becomes of the opinion that the alleged act is not a 'specified act';
- the Commission becomes of the opinion that there is insufficient evidence to establish a *prima facie* case in relation to the alleged specified act; or
- in relation to certain categories of specified person, unless the Commission is satisfied, following consultation with a Minister, that: (a) it is appropriate to carry out an investigation, and (b) an adequate investigation cannot or will not be carried out by the Minister or another body.

68. The Commission **may also decline to investigate** a complaint about a specified act if the Commission becomes of the opinion that evidence sufficient to sustain the complaint is not and will not be available.
69. Such matters are considered before a decision is made to proceed (or not to proceed) to a formal investigation, to ensure that the Commission's investigations are focused on matters that have the greatest potential impact on public life, and where there is a reasonable prospect that an adverse finding might be supported following an investigation.
70. Taking into account the further information obtained, and all of the circumstances, the Commission may decide to:
- **Carry out an investigation**, whether in relation to a complaint received or on its own initiative (see 'Part D: Investigations');
  - **Close the complaint or matter, but refer** the subject-matter to appropriate third parties for consideration.
  - **Close the complaint or matter and take no further action.**
71. The Commission will usually provide its staff with detailed verbal reasons for its decision, with reference to the contents of any preliminary inquiry report, briefing note and/or associated documentation and materials. The Commission's staff will record the Commission's decision in the minutes and set out its reasons in correspondence with the respondent (and, where applicable, the complainant).
72. The respondent (and, where applicable, the complainant) will be notified in writing of the Commission's decision as soon as practicable after the decision is made.
73. **Where a matter is closed following further inquiries, this concludes the Commission's consideration of the matter.** There is no appeal in respect of the Commission's decisions not to carry out a formal investigation.

## Part D: Investigations

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### Introduction

74. This Part of the Procedures applies in the very small number of cases where the Commission has made a decision to carry out a formal investigation. This Part of the Procedures is determined by the Commission in accordance with section 32(6) of the Ethics in Public Office Act 1995.
75. The Commission's role under the Ethics Acts is inquisitorial in nature. This means that the Commission itself decides whether a formal investigation should be carried out and the nature and extent of any investigation. The Commission is charged with gathering evidence itself, as well as conducting investigation hearings, examining witnesses and making findings. The Commission is not an adjudicator between parties (e.g. between a complainant and a respondent) or an advocate for any party.
76. Commission investigations are a formal process, carried out using statutory powers under the Ethics Acts. However, the Commission will apply this Part of the procedure in a manner which is as informal as is consistent with the due performance of its functions and with a view to achieving fairness in all the circumstances. Commission investigations are usually conducted in public.
77. The subject of an investigation (known as the '**respondent**') has specific rights to fair procedures in relation to the Commission's investigations. This Part sets out how the Commission's procedures will usually apply in relation to the respondent during a formal investigation. Respondents are not required to have legal representation before the Commission, but they may choose to do so.

### Evidence gathering

78. Following a decision to carry out a formal investigation, the Commission will consider whether the evidence obtained during any preliminary inquiry is sufficient or whether further evidence is required. The conduct of this part of the investigation may vary depending on the nature and gravity of the alleged actions and all the circumstances of the case. The Commission's aim is to seek out, obtain and preserve evidence relating to the subject matter of the investigation.
79. To facilitate expeditious investigations, the procedure for obtaining evidence may be informal and may include correspondence by email, without the need for a formal witness statement. Where a statement is obtained, it may be signed or the witness may be otherwise identified (for example, through their email signature).
80. The Commission may request that its staff make further inquiries, obtain further documents and materials and seek the voluntary cooperation of witnesses, on its behalf. This may include interviewing witnesses and/or taking witness statements, where appropriate.

81. The Chairperson may decide to exercise her/his statutory powers of investigation under section 32(2) of the 1995 Act and/or section 18 of the 2001 Act to obtain further evidence for the purpose of the Commission's investigation. These powers may be used to:

- Direct the respondent to attend before the Commission;
- Direct any witness to provide information, a statement or an explanation to the Commission (or to do any other thing that the Chairperson considers just and reasonable);
- Direct any witness to send documents or other materials to the Commission;
- Direct any witness to attend before the Commission to give evidence and/or produce documents or other materials;
- Direct any person to make discovery of documents on oath.

82. Members of the Commission's staff may support the Chairperson in the exercise of these powers.

83. Non-compliance with directions given by the Chairperson may be subject to enforcement action. Some instances of non-compliance amount to a criminal offence and others are subject to enforcement action before the High Court. Any direction issued by the Chairperson will notify the recipient of the potential consequences of non-compliance.

84. Witnesses before the Commission are entitled to the same privileges and immunities as they would have in the High Court, including the right to rely on legal professional privilege. Where a person wishes to rely on legal professional privilege to refuse to provide any information, statement, document or other materials to the Commission, the Commission will seek a detailed explanation as to the basis on which the person is asserting privilege so that the validity of reliance on privilege can be properly evaluated. The Commission will take steps to ensure that any information provided by a person about legally privileged material will be effectively protected. If a person decides voluntarily to disclose legally privileged information to the Commission for the purpose of assessing the validity of a claim of privilege, such disclosure will not amount to a waiver of legal privilege.

85. The Chairperson will exercise their statutory powers of investigation in line with the following principles:

- **Legality:** Investigations will be conducted lawfully, in a manner consistent with the legal rights of persons affected by an investigation.
- **Proportionality:** The Chairperson will exercise their statutory powers in a proportionate manner, having regard to the duty to seek out, obtain and preserve evidence and having regard to the legal rights of persons affected by an investigation.
- **Relevance and necessity:** The Commission will take steps to ensure that the scope of each investigation is as focused as practicable in light of the particular circumstances of the

matter, bearing in mind that extraneous material may nevertheless be obtained. In planning and carrying out investigations, the Commission will seek to limit the scope to what is necessary to achieve its objectives in the circumstances.

- **Fairness:** The Commission recognises the right to fair procedures enjoyed by those under investigation, while also recognising the legitimate interest of the Commission, and the public interest, in investigating matters under the Ethics Acts.
- **Transparency:** The procedures of the Commission are documented and the Chairperson will demonstrate due regard for the rights of persons affected by an investigation. However, in the interest of carrying out effective investigations, and having regard to the need to seek out, obtain and preserve evidence and to protect the legal rights of persons affected by an investigation, the Commission may be prevented from releasing information in relation to investigations.

86. Where any information is identified during the course of the investigation which may be favourable to the respondent and of which the respondent may be unaware, the Commission will keep a record of the nature and source of the information, so that the respondent may be notified in due course.

87. Any material obtained during the course of an investigation will be retained by the Commission until the conclusion of the investigation. Material may be retained for a longer period in accordance with the records retention policies of the Commission and the requirements of data protection legislation.

88. Any information, documents or other material obtained during the course of an investigation will be held in electronic form on a secure ICT system. Any hard copy documents or materials will be kept securely on the Commission's premises. Further information on how the Commission holds information and processes personal data is available in its [Privacy Policy](#) and in its [Corporate Governance Framework](#).

## Preparing for the investigation hearing

89. Formal Commission investigations involve a 'sitting', which is an oral hearing known as an 'investigation hearing'. In advance of the investigation hearing, the Commission will usually take the following steps.

90. The Commission will set a date for an investigation hearing and will notify the respondent of the date, time and place. The Commission will usually give at least two months' notice of the date to the respondent. Respondents have a legal duty to attend where directed by the Commission. If the respondent has a good reason why it is not possible to attend on that date, the respondent must notify the Commission as soon as possible, giving reasons and supporting documentation and an indication of the length of the adjournment requested. The Commission will consider whether the reason amounts to a just cause or excuse.

91. The Commission will prepare and give to the respondent in advance of the hearing:

- a statement of the contraventions or specified act(s) alleged to have been committed or done by the respondent (known as the “**Statement of Alleged Contraventions**”);
- the names of the witnesses proposed to be called by the Commission;
- a copy of any statements or other evidence proposed to be relied upon as part of the investigation;
- a copy of any statements or other evidence obtained by the Commission as part of the investigation but not proposed to be relied upon as part of the investigation;
- an indication of the nature and source of any information identified by the Commission during the course of the investigation which may be favourable to the respondent and of which the respondent may be unaware.

92. The Commission will request that the respondent indicate:

- whether any of the evidence provided may be admissible in writing as evidence, without the need for oral evidence to be given as to their contents;
- whether the respondent requires any other witness to be directed to attend; and
- whether the respondent proposes to present their case through a legal or other representative.

93. Where the respondent wishes to raise any preliminary matter or make any application to the Commission, the respondent should notify the Commission of their intention to do so in writing, together with any written submissions that the respondent wishes to make. Such an application may include an application for the investigation to be held wholly or partly in private.

94. The Commission will usually consider any preliminary matter or application in writing. If the respondent wishes the Commission to hear oral submissions on the matter or application, the respondent must notify the Commission of the reasons why consideration in writing is not appropriate and a summary in writing of the content of the proposed oral submissions.

95. The Commission may direct any witness to attend the investigation hearing. Where such a witness notifies the Commission in writing of a reason, with supporting documentation, as to why they cannot attend on the date of the investigation hearing, the Commission will consider whether the reason amounts to a just cause or excuse. Where the Commission proposes to proceed in the absence of the witness, the Commission will notify the respondent and give the respondent an opportunity to comment on whether the absence of the witness may affect the fairness of the investigation.

96. In the case of an investigation into a complaint, the Commission will notify the complainant of the date, time and place of the investigation hearing, and of any preliminary hearing.

97. The Commission will publish notice of the investigation hearing, and of any preliminary hearing, on its website, including how members of the public and the media may access the hearing.

## Preliminary hearings

98. Preliminary matters will usually be dealt with at the beginning of an investigation hearing. However, in certain circumstances the Commission may consider it appropriate to hold a preliminary hearing in advance of the investigation hearing to consider an application or deal with a legal matter.

99. Where the Commission decides to hold a preliminary hearing, the respondent will be notified in advance of the proposed structure of the hearing and the issues that will be considered. The Commission may set time limits for oral submissions to be made at the hearing.

100. The Commission will notify the respondent whether they are directed to attend the hearing or whether the respondent is permitted to choose whether to attend.

101. Preliminary hearings will generally be held in public. In exceptional circumstances, the Commission may decide that it is appropriate for a preliminary hearing, or part of a preliminary hearing, to be held in private. A person who attends a private hearing of the Commission shall not disclose information obtained during the hearing. Disclosure of information obtained by being present at a private hearing is an offence.

## Investigation hearing

102. The investigation hearing will usually be conducted by all six Commissioners. Where it is not possible for all Commissioners to conduct the hearing, the respondent will be notified in advance and given an opportunity to comment.

103. Investigation hearings will usually be conducted by the Commission in person, at a premises decided by the Commission. In exceptional circumstances, the Commission may decide to conduct an investigation hearing or part of an investigation hearing remotely or in hybrid format.

104. Where the respondent fails to attend the hearing without just cause or excuse, the Commission may nonetheless decide to proceed to hear the evidence and to make a determination on the investigation.

105. The investigation hearing will generally be held in public. In exceptional circumstances, the Commission may decide that it is appropriate for the investigation hearing, or part of the investigation hearing, to be held in private. A person who attends a private hearing of the Commission shall not disclose information obtained during the hearing. Disclosure of information obtained by being present at a private hearing is an offence.

106. The following persons will usually attend the hearing:

- The Commission's staff and legal advisers / representatives;
- The respondent and their legal or other representatives (where applicable);

- Witnesses;
- A stenographer or technical assistant for recording the hearing;
- Members of the public;
- Members of the press and media.

107. Attendance by members of the public and the press and media will usually be facilitated online, through a web platform.
108. The investigation hearing may be recorded in digital format or by a stenographer. An audio recording or written transcript, as appropriate, will be made available to the respondent on request. If the respondent requires a written transcript of the hearing that has been digitally recorded, the respondent may make such a request in writing to the Commission, giving reasons as to why the digital recording is not sufficient.

### **Evidence at the investigation hearing**

109. The Commission may receive evidence in writing, without the need for oral evidence, with the consent of the respondent. Where a document is signed, the Commission may take such signature to be that of the person whose signature it purports to be in the absence of evidence to the contrary.
110. The Commission may, if it considers it appropriate to do so, arrange for the evidence of a witness to be taken by a Commissioner, a member of its staff or another person at any other place in or outside the State. Where the Commission considers it appropriate to do so, the Commission will notify the respondent of its proposed action and provide the respondent with an opportunity to comment.
111. Where the Commission hears oral evidence, the Commission will decide whether it should be given on oath or following the making of a declaration of truth. The Chairperson of the Commission will administer any oath or declaration.
112. Subject to the next paragraph, a witness before the Commission has the same privileges and immunities as a witness before the High Court in respect of evidence, including in respect of legal professional privilege. Where a witness wishes to rely on legal professional privilege to decline to give evidence or to provide information or other material, the Commission will seek a detailed explanation as to the basis on which the person is asserting privilege so that the validity of reliance on privilege can be properly evaluated. The Commission will take steps to ensure that any information provided by a person about legally privileged material will be effectively protected. If a person decides voluntarily to disclose legally privileged information to the Commission for the purpose of assessing the validity of a claim of privilege, such disclosure will not amount to a waiver of legal privilege.
113. Witnesses before the Commission are not entitled to refuse to answer questions, or to produce or send documents, on the ground that their answer or the document might incriminate them. However, statements or admissions made before the Commission, under examination for the Commission's investigation, to an inquiry officer or in a document sent or produced to the

Commission are not admissible as evidence in criminal proceedings, other than in specific offences under the Ethics Acts (such as failing to comply with a direction by the Commission).

**Structure of the investigation hearing**

114. The Commission may conduct the investigation hearing in a manner that it considers appropriate in all the circumstances, taking into account the nature and gravity of the allegations and the evidence, the number of witnesses required to give oral evidence and any other relevant matters.
115. Subject to this, the investigation hearing will usually follow a similar structure:
- Any procedural or outstanding preliminary matters will be dealt with by the Commission at the outset of the hearing.
  - The Commission (or its legal representatives) will summarise the allegations and the evidence against the respondent.
  - Evidence that has been admitted in writing with the consent of the respondent may be noted or summarised, unless the Commission considers it necessary for the evidence to be read.
  - Where a witness is called by the Commission to give oral evidence, the Commission (or its legal representative) will usually ask questions of the witness first, with the respondent or their representative also having an opportunity to ask questions of the witness.
  - Where a witness is called by the respondent to give oral evidence, the respondent or their representative will usually ask questions of the witness first, with the Commission (or its legal representative) also having an opportunity to ask questions of the witness.
  - The respondent will be entitled to present their case and any additional evidence to the Commission, and to question witnesses, themselves or through a legal or other representative.
  - The respondent may give oral evidence if they wish, but they are not required to do so. If the respondent decides to give oral evidence, with or without questions from their representative, the Commission (or its legal representative) may ask questions of the respondent.
116. The Commission may ask questions of any witness, or of the respondent if they choose to give evidence, at any time. The Commission may seek specific submissions, information or clarification from its legal representatives or the representatives of the respondent.
117. At the end of the hearing, the Commission (or its legal representatives) will summarise the evidence and the issues for determination by the Commission. The respondent or their representatives will be given an opportunity to make a closing statement to the Commission.

118. The Commission will conclude the hearing and will usually proceed to deliberate on its findings. The Commission will notify the respondent in due course of the likely date on which the report of its findings will be issued.

### **Witness expenses**

119. A witness who attends an investigation hearing is entitled to reasonable vouched expenses. Such expenses could include:
- Travel expenses to / from the hearing venue
  - Overnight accommodation and meals
  - Car Parking
120. Please note claims not supported by vouchers will not be paid. All claims will be assessed to ensure compliance with Revenue rules.
121. The Commission will determine the reasonableness of expenses by reference to the Civil Service rates, as determined by the Office of the Revenue Commissioners, available at <https://www.revenue.ie/en/employing-people/employee-expenses/travel-and-subsistence/civil-service-rates.aspx>. Expenses will be capped at those rates, but will only be paid when specifically vouched. Day allowances will not be paid.
122. 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.
123. The Commission will 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.

### **Costs**

124. The Commission has two specific powers to award certain kinds of costs in certain circumstances, as follows.
125. Following an investigation, the Commission may order *a complainant to pay costs* of up to €1,875<sup>2</sup> to a person (which may include a respondent). Such an award may only be made where the Commission determines, after an investigation:
- that the complaint was frivolous or vexatious, or
  - that there has been no contravention or specified act and that there were no reasonable grounds for the complaint.

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<sup>2</sup> The Ethics Act references a sum of £1,500, which would convert to this sum consistent with the Euro Changeover (Amounts) Act 2001.

126. The Commission also has a power, following an investigation, to order:
- any person (including the Minister for Finance) to *pay the costs necessarily incurred by another person* appearing before the Commission, or
  - any person to *pay the Commission's costs*, to the Minister for Finance.
127. In order to award such costs, the Commission needs to be satisfied that there are '*sufficient reasons rendering it equitable to do so*'. The factors that the Commission will take into account when considering any award of costs include:
- The Commission's findings in relation to the investigation;
  - The extent to which the person in question cooperated with or provided assistance to any preliminary inquiries and the Commission's investigation (or failed to do so);
  - The extent to which the person, or any other person, knowingly provided false or misleading information to the Commission;
  - The fairness of awarding costs in all the circumstances.
128. Apart from the above, the Commission has no general power to award costs (including costs of legal representation) to a respondent, complainant or witness.
129. A respondent, complainant or witness who wishes the Commission to consider awarding costs should notify the Commission of this at or shortly before the investigation hearing concludes. This may be done orally or in writing. Alternatively, the Commission may itself consider whether it may be appropriate to award costs when it is considering the findings of its investigation.

## Investigation report

130. The Commission will prepare a written report which sets out its factual findings and its determinations as to whether there has been a contravention and/or whether the respondent has done a specified act, and whether the contravention or act is continuing.
131. The Commission will apply the civil standard of proof (i.e. the balance of probabilities) in reaching its findings. However, the Commission will be cognisant of whether its findings could result in reputational damage and, if so, ensure that its findings are proportionate to the evidence upon which they are based.
132. Where the Commission finds a contravention or a specified act, the Commission will determine:
- If the contravention or act is continuing, the steps that must be taken by the respondent to secure compliance with the 1995 Act or to cease the specified act, and the period of time within which such steps should be taken;

- Whether the contravention or act was committed or done inadvertently, negligently, recklessly or intentionally;
  - Whether the contravention or act was, in all the circumstances, a serious or a minor matter;
  - Whether the person acted in good faith and in the belief that his or her action was in accordance with guidelines or advice from the Commission.
133. Where the Commission finds that there has not been any contravention and that the person has not done a specified act, it will determine whether it is of the opinion that the allegation concerned was frivolous or vexatious, or that there were no reasonable grounds for it.
134. The Commission's report may refer to such other matters as the Commission considers appropriate in the circumstances.
135. The Commission will provide a copy of the report to the respondent and the complainant and will publish a copy of the report on its website.
136. Depending on the role of the respondent, a copy of the report may also be provided to:
- The Oireachtas Committee on Members Interests
  - The Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation
  - The Minister responsible for the Department within which the respondent holds a position or is employed
  - The Cathaoirleach, the Leas-Cathaoirleach and/or the Chief Executive of a local authority

## Discontinuance or postponement of an investigation

137. 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 notify them to the complainant and the respondent.
138. In certain circumstances, the Commission may decide to adjourn or postpone proceedings in relation to an investigation. The Commission will take into account all of the circumstances of the case, including any potential impact on fairness to the respondent, when reaching their decision. The Commission will record their decision in writing in respect of an adjournment or postponement and will notify the complainant and the respondent as soon as possible.
139. Where the Commission reaches the opinion, either during or at the conclusion of an investigation, that the respondent may have committed an offence relating to the performance of their functions as a public official, the Commission will adjourn the investigation and prepare a report in writing for the Director of Prosecutions ("DPP"). Before deciding whether an investigation should be resumed, the Commission will await notification from the DPP as to whether criminal proceedings have or will be brought and the outcome of any such proceedings. The Commission will include a statement of the notification in its final report in respect of the investigation (whether following a decision not to proceed or at the conclusion of the investigation).

140. Where the Commission adjourns or postpones an investigation for any reason, or provides a report to the DPP, the Commission may consider it appropriate to prepare an interim report in writing in relation to the investigation. If it does so, it will provide a copy of the interim report to the respondent and the complainant and any other person it considers appropriate, and may decide to publish a copy on its website.

## Conclusion of an investigation

141. **Once the Commission has made its findings and issued its report, the Commission cannot reconsider its decision in relation to the investigation.** There is no mechanism for an appeal against a decision of the Commission on an investigation.
142. Where an issue has arisen as part of an investigation that raises matters of general public interest or importance, the Commission may take steps to inform relevant public bodies and officials of its findings and to secure high standards of conduct across the public service.

## Offences in relation to investigations

143. There are a number of offences relating to ethics investigations, as follows:
- Failing, without just cause or excuse, to attend before the Commission as directed.
  - When giving evidence as a witness before the Commission, refusing to take an oath as required, or to answer any question that may be lawfully required, or to produce any document or material as directed.
  - Failing or refusing, without just cause or excuse, to provide or send any document or material to the Commission as directed.
  - Doing any thing in relation to investigation proceedings that would be a contempt of court were it done by a witness in the High Court.
  - Giving false evidence before the Commission, where if given in a Court would amount to perjury.
  - Disclosure of information obtained under the Ethics Acts or by being present at a hearing of the Commission held in private.
  - Obstructing or hindering the Commission, an inquiry officer or a person examining a witness in the performance of their functions.
  - Failing to preserve a document or information that a person knows to be relevant to an investigation or intended investigation or which they are aware.

144. Any person who is found guilty of an offence, on summary conviction, is 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.
  
145. Where the Commission considers that an offence under the Ethics Acts may have been committed by a person, the Commission may refer the matter to An Garda Síochána and/or the DPP to consider investigation and prosecution.