



Northern Ireland

Local Government Commissioner for Standards

DECISION

of the Assistant Northern Ireland Local Government Commissioner for Standards following an Adjudication Hearing held on 15 November 2023 and 15 February 2024

**Case References: C00196, C00287, C00292, C00396, C00397
Local Government Act (Northern Ireland) 2014**

In the matter of former Councillor Luke Poots (the Respondent/Councillor Poots)

Lisburn & Castlereagh City Council.

INTRODUCTION

The Northern Ireland Local Government Commissioner for Standards, Ms Margaret Kelly, has appointed Mr Ian Gordon, OBE, QPM, as Assistant Local Government Commissioner (the Assistant Commissioner) in relation to the Adjudication Hearing process in respect of this complaint against former Councillor Poots (also referred to as the Respondent). Mr Gordon was assisted by Mr Michael Wilson, Solicitor, Legal Assessor.

The Adjudication Hearing opened on the 15 November 2023 and was held in public at the office of the Northern Ireland Local Government Commissioner for Standards in Belfast and details of the arrangements for the Hearing had been published on its website.

THE COMPLAINT PROCESS

Part 9 of the Local Government Act (Northern Ireland) 2014 (the Act) introduced the Ethical Standards framework for local government, based on a mandatory Northern Ireland Local Government Code of Conduct for Councillors (the Code) which came into effect on 28 May 2014.

1. On 27 March 2018 the Northern Ireland Local Government Commissioner for Standards (the Commissioner) received a complaint from Mr Steven Agnew MLA alleging that Councillor Poots had, or may have, failed to comply with the Code.

2. On 9 May 2018 the Commissioner received a complaint from Mr & Mrs Carson & Diane McMullan alleging that Councillor Poots had, or may have, failed to comply with the Code.
3. On 30 May 2018 the Commissioner received a complaint from Mr Brian Connolly alleging that Councillor Poots had, or may have, failed to comply with the Code.
4. On 11 April 2018 the Chief Executive of Lisburn and Castlereagh City Council forwarded to the Deputy Commissioner an anonymous complaint which had been received on 22 March 2018 and which raised concerns relating to six planning applications.

The Respondent and the complainants were informed that an investigation would take place.

The Complaints:

1. From Mr Agnew :

Mr Agnew stated in this complaint that on 4 December 2017 Councillor Luke Poots, as Chair of the Planning Committee, voted on four planning applications on which his father, Edwin Poots MLA had made oral submissions. The applications in question were LA05/2015/0342¹ LA05/2017/0633/0, LA05/2015/0345/F and LA05/2017/0552/F. Mr Agnew stated that Councillor Poots had advised his father would be speaking on the applications at the beginning of the meeting, when declarations of interest were being sought. Mr Agnew stated that by making this declaration Councillor Poots *'demonstrated that he was aware that there was a conflict of interest or at least the possibility of a perceived conflict of interest.'*

Councillor Poots' father, Mr Edwin Poots MLA, made oral submissions at the meeting on each of these applications, and Mr Agnew stated that Councillor Poots voted on each occasion *'in accordance with his father's submission'*. Mr Agnew highlighted that there were divisions in relation to three of the applications, two of which had a margin of one vote and one in which resulted in tied votes, which were on each occasion decided by the casting vote of Councillor Poots as Chair of the Planning Committee. Mr Agnew stated that Councillor Poots should have *'clearly and unambiguously declared an interest in these four planning applications and excused himself from the meeting while they were being discussed and voted on.'* He also commented that *'it could reasonably be believed that Cllr Poots gave preferential treatment to his father.'*

Mr Agnew alleged that Councillor Poots may have breached Paragraphs 4.3, 4.16, 4.17, 6.4 and 8.1 of the Code of Conduct.

2. From Mr & Mrs McMullan:

Mr & Mrs McMullan also referred to the Planning Committee meeting of 4 December 2017, specifically regarding planning application LA05/2017/0633/0 which had been recommended for refusal by the planning officer. Mr & Mrs McMullan, who objected to the application, stated that at the meeting Councillor Poots advised that his father would be speaking on this application and a number of other applications. Councillor Poots subsequently voted on this

1 Referred to in committee minutes and planning file as LA05/2015/0342/O

matter. Mr & Mrs McMullan stated that, given that Mr Edwin Poots spoke in support of the application, *'it is highly debatable whether Councillor Luke Poots can remain impartial given the family connection and the political influence of a senior DUP personality. Where there is doubt, for the sake of clarity and the good name of the Planning Committee, Luke Poots should have excused himself'*.

3. From Mr Connolly:

Mr Connolly referred to planning application LA05/2015/0342/O, which came before the Planning Committee on 4 December 2017 with a recommendation to refuse planning permission. Mr Connolly stated that Mr Edwin Poots spoke in favour of the application, while Councillor Poots voted in favour of same. Mr Connolly highlighted that the committee narrowly voted in favour of the application. Mr Connolly stated that this may be a conflict of interest on the part of Councillor Poots.

4. An anonymous complaint:

This was received by Ms Theresa Donaldson, former Chief Executive of Lisburn & Castlereagh Council on 22 March 2018. Ms Donaldson subsequently provided the Deputy Commissioner with a copy of this complaint on 11 April 2018. The complainant referred to six planning applications namely:

LA05/2016/0676/F, LA05/2015/0815/F, LA05/2016/0627/F, A05/2015/0178/F, LA05/2016/0513/F and LA05/2017/0500/O

The applications were discussed across four different planning committee meetings on 3 April 2017, 8 May 2017, 5 June 2017 & 4 September 2017. The complainant stated that *'It is with some concern that after Mr Edwin Poots MLA has spoken in support of an application that his son Councillor Luke Poots, who is a Committee Member, proposes that the applications be approved'*. The complainant referred specifically to the Planning Committee Meeting of 4 September 2017 when Councillor Poots was chairman. The complainant highlighted that *'Mr L. Poots after his father had spoken then proposed and had seconded that he agreed that the reasons cited for the approval of the application would be the reasons stated in the minutes. There is a clear conflict of interest by Mr L Poots.'*

The Deputy Commissioner submitted an Investigation Report to the Commissioner on 7 March 2022 in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014, and it was accepted for Adjudication by the Assistant Commissioner on 20 April 2022.

The alleged breaches of the Code are:

POTENTIAL BREACH 1:

Rules relating to the Declaration of Non-Pecuniary Interests

Paragraph 6.3:

'You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting. In addition to those areas set out in paragraph 5.2, an interest will also be significant where you anticipate a decision on the matter might reasonably be deemed to benefit or disadvantage yourself to a greater extent than other council constituents. Any sensitive information mentioned in paragraphs 5.4 to 5.6 is not to be given.'

Paragraph 6.4:

'You must declare any significant private or personal non-pecuniary interests in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or sub-committee meeting) when the matter is being discussed. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest.'

Paragraph 4.3:

'You must review regularly (at least annually and when your particular circumstances change) your personal circumstances and take steps to mitigate any conflict of interest in relation to your functions as a councillor. Such conflict may arise as a result of circumstances such as a change of business interests, a change in direct or indirect pecuniary interest required to be declared under section 28 of the 1972 Act or involvement on a new committee.'

Paragraph 4.16:

You must not:

- a. Use, or attempt to use, your position improperly to confer on, or secure, an advantage for yourself or any other person.*
- b. Use, or attempt to use, your position improperly to seek preferential treatment for yourself or any other person; or*
- c. Use, or attempt to use, your position improperly to avoid a disadvantage for yourself or any other person, or to create a disadvantage for any other person.*

POTENTIAL BREACH 2:

Rules Relating to Decision Making

Paragraph 8.1:

When participating in meetings or reaching decisions regarding the business of your council, you must:

(a) Do so objectively, on the basis of the merits of the circumstances involved, and in the public interest.

(f) Act fairly and be seen to act fairly.

(g) Ensure that all parties involved in the process are given a fair hearing (insofar as your role in the decision making process allows)

(h) Not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any decision.

Paragraph 9.3 of the Code states:

‘Your role as a Councillor is to represent the views and aspirations of your community through development of the local development plan, discussions with developers and council planning officers or deciding on planning applications. The Code (and any associated guidance) is intended to assist you in balancing the interests of developers and interest groups with taking planning decisions, by applying your local knowledge and the advice and guidance of planning officers, in a fair, impartial and transparent way, for the benefit of the whole community. This Code applies to Councillors at all times when involving themselves in the planning process, including taking part in the decision-making meetings of the council or when involved in less formal occasions, such as meetings with officers or the public. It applies equally to local plan development and planning enforcement as it does to planning applications.

POTENTIAL BREACH 3:

Disrepute

Paragraph 4.2

‘You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute.’

POTENTIAL BREACH 4:

Compliance with the Commissioner’s requests

Paragraph 4.6:

‘You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner’s statutory powers.’

Principles of Conduct:

The Deputy Commissioner’s Investigation Report also included in its consideration of the complaints against the Respondent:

- i. The Commissioner’s Guidance on the Code
- ii. The Principles of Conduct contained in the Code.

The allegations were investigated by the then Acting Deputy Commissioner for the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman’s Office.

ADJUDICATION HEARING ON WEDNESDAY 15 NOVEMBER 2023

The Assistant Commissioner opened the Hearing and said its purpose was to determine whether the Respondent, had failed to comply with the Code. The allegations could only be upheld if the Deputy Commissioner established to the satisfaction of the Assistant Commissioner that, on the balance of probabilities, the Respondent had failed to comply with the Code.

The Deputy Commissioner was represented by Peter Coll KC and Dr. Gordon Anthony BL (instructed by Arthur Cox, Solicitors), and the Respondent was represented by Peter Canavan BL (instructed by Donnelly and Wall, Solicitors). Although the Respondent was not present, Mr Canavan BL informed the Assistant Commissioner that there would not be any application to adjourn because of this, and that he was content to continue, noting that the Respondent remained in contact with his legal advisors.

The Assistant Commissioner stated that the Hearing was to be initially in two stages:

Stage 1: was to establish the facts of the case.

Stage 2: would then determine, on the basis of the established facts, whether or not the Respondent had breached the provisions of the Code in the manner alleged.

If the Respondent was found to have breached the Code, then a further stage (**Stage 3**) would be held to determine sanction.

PRELIMINARY ISSUE

The Respondent raised a preliminary issue relating to the admissibility of the evidence of a witness, Kate McCusker a Solicitor who had provided a written Statement of Evidence dated 9 December 2019 (and an accompanying attendance note) which included advice given by her to the Respondent regarding his participation on the Council's Planning Committee when his father (Edwin Poots) spoke either for or against a planning application. The Assistant Commissioner considered this matter in private session.

Private hearing

The central issue was whether legal advice privilege attached to any part of the evidence of Ms McCusker, and, if so, whether that privilege had been waived in consequence of what the Respondent had said to Mr Jeffrey McWatters, a Senior Investigating Officer in the LGES Directorate. In the event that privilege existed and had not been waived, the Assistant Commissioner would also have to bear in mind that the evidence of any other witness should not reference the advice provided.

A secondary issue was whether or not anything said by the Respondent's father, Edwin Poots MLA, when he was interviewed for the purposes of the investigation on 5 July 2019, could evidence the waiver of privilege.

It was common case that Ms McCusker, who was a solicitor and an external legal advisor to the Council, provided legal advice to councillors and Council officers on planning matters. It was also common case that Ms McCusker had provided advice to the Respondent, which was relevant to the matters under enquiry, and that her advice attracted legal advice privilege. The question to be determined therefore was whether the Respondent had waived this privilege.

Mr Canavan BL asserted that the Respondent had never waived this privilege and that Ms. McCusker's statement, and her attendance note, should not be admitted in evidence, and that to do so would be unfair, unjust and in breach of the Respondent's Article 6 ECHR rights.

Mr Canavan BL submitted as the legal advice was privileged, it was for the Deputy Commissioner to prove on the balance of probabilities that privilege had been waived. This, he said would involve a finding of fact by the Assistant Commissioner. He stated that the test to be applied was an objective one and referenced the authority of Re Konigsberg [1989] 1 WLR 1257.

Mr Canavan BL also submitted that Edwin Poots could not waive privilege on behalf of the Respondent.

Mr Coll KC confirmed that Mr McWatters was available to give evidence.

Having taken into account the Respondent's submissions and having heard from Mr Coll KC, the Assistant Commissioner concluded that he should hear from Mr McWatters in relation to his conversations with the Respondent on 9 April 2018 and 10 January 2019 and his record of those conversations so that he could satisfy himself as to the factual accuracy, or otherwise, of his evidence.

Mr Canavan BL acknowledged that he was inviting the Assistant Commissioner to determine this issue, in the full knowledge that the Respondent was not present to give evidence on the matter.

Mr McWatters gave sworn evidence and was questioned by Counsel for both parties. He confirmed that at the relevant time he was the Senior Investigating Officer involved in the investigation of the complaints made against the Respondent. He referred to his telephone conversations with the Respondent on 9 April 2018 and 10 January 2019, and his handwritten and typed notes of those conversations.

He stated that his practice was to make a handwritten note during a phone call and to make the typed record straightaway afterwards. He explained that the purpose of his handwritten note was to try and make a record of what he was being told during a phone call, so that his typed note would be as comprehensive as possible. He also stated that some parts of his handwritten note were a verbatim record and in other parts he would jot down a word, or a couple of words. He concluded his evidence saying that he used the handwritten version as a prompt to enable him to recall the content of the phone conversation in more detail as he was typing it, to make a more complete record for the system.

In his typed note of the conversation with the Respondent on 9 April 2018, Mr McWatters records:

' Luke Poots says he has done nothing wrong, and he has been told by Cleaver Fulton Rankin (Kate McCusker) and Stewartie Beattie QC that his actions are in order.'

The Assistant Commissioner adjourned the Hearing and retired with the Legal Advisor to consider the preliminary issue raised. The Assistant Commissioner was reminded by the Legal Assessor that his consideration of the evidence given by Mr McWatters was solely restricted to his determination of the legal advice privilege issue, and that he was not concerned with how it might relate to any of the wider issues in the Adjudication. In the absence of the Respondent, the Assistant Commissioner was also reminded to take into account the content of the Respondent's response to the Investigation Report set out in his Councillor Response Form (dated 25 November 2022) ('CRF') and his Statement of Evidence (dated 10 November 2023).

On his return, the Assistant Commissioner, having noted the comments of the Respondent's Counsel at the commencement of the Hearing, confirmed that it was appropriate to proceed in the absence of the Respondent to deal with the issue of privilege.

The preliminary matter, on legal privilege, related to the written statement and attendance note of Ms McCusker, and it was common case that the legal advice that she gave to the Respondent was privileged. The question for the Assistant Commissioner was whether the Respondent had waived this privilege when he spoke with Mr McWatters.

In his CRF, the Respondent referenced the legal advice privilege attaching to his conversation with Ms McCusker and stated that her attendance note was not a full and accurate note of their discussion. Although Mr McWatters' written Statement of Evidence was included within the Investigation Report, the Respondent's Statement of Evidence did not make any reference to it.

The Assistant Commissioner carefully observed and listened to the evidence of Mr. McWatters.

The Assistant Commissioner was satisfied that

- the evidence from Mr. McWatters was given honestly, and that the content of his handwritten notes had informed the detail recorded in his typed notes;
- these notes were an accurate and reliable record of his discussions with the Respondent
- in his typed notes of their conversation on 9 April 2018, the witness had recorded that the Respondent had said he had done nothing wrong, and that he had been told by Ms McCusker and Mr Beattie (now KC), that his actions were in order; and
- that the Respondent had freely volunteered this information to the witness.

The Respondent had offered no evidence other than a broad denial in his Statement of Evidence of the allegations set out in the Investigation Report. His Statement of Evidence dated 10 November 2023 did not address the evidence of Mr McWatters. Accordingly, the CRF and the Respondent's Statement of Evidence were of very limited assistance to the Assistant Commissioner in his consideration of whether privilege had been waived.

The Assistant Commissioner had reminded himself that the test to determine a waiver of privilege was an objective one, and that he had to analyse objectively what the Respondent had done.

The Assistant Commissioner was satisfied that the conduct of the Respondent, when he informed Mr. McWatters on 9 April 2018 of the advice he had received - that he had done nothing wrong and that his actions were in order - amounted to a waiver of privilege, and that this conduct was inconsistent with the maintenance of confidentiality in the privileged advice.

It was clear to the Assistant Commissioner that the Respondent was not merely referring to the fact that he had received legal advice, but that he had also relied upon the content of the advice.

Accordingly, the Assistant Commissioner concluded that to ensure the fairness of the Adjudication process he should receive, in evidence, Ms. McCusker's full statement and her attendance note, so that the Respondent's actions could be considered in the context of that advice.

In coming to this conclusion the Assistant Commissioner had also carefully considered the submissions from the parties, and the helpful legal authorities referred to, including *Re Konigsberg (1989) (above)*, *Mohammed -v- MOD [2013] EWHC 4478 (QB)*, and *Great Atlantic Insurance Co -v- Home Insurance Co [1981] WLR 529*. In addition, the Assistant Commissioner was satisfied that his conclusion on the waiver of privilege issue was not inconsistent with the Respondent's Article 6 ECHR rights.

As the Adjudication Hearing had not yet proceeded to consider the Facts of the matter, the Respondent remained entitled to challenge and/or comment on the evidential value of all of the evidence presented by the Deputy Commissioner in due course at Stage 1 of the Adjudication. This included the evidence of Ms. McCusker and Mr. McWatters.

In summary, the Assistant Commissioner concluded that privilege had been waived by virtue of the Respondent's conversations with Mr. McWatters. For this reason, it was not necessary for the Assistant Commissioner to consider whether the evidence from Mr. Edwin Poots, at interview, amounted to a sufficient disclosure to be a waiver of privilege.

Resumption of Public Hearing

On the resumption of the public hearing, Mr Coll KC briefly outlined the nature of the Deputy Commissioner's referral of his Investigation Report for Adjudication.

When invited to respond, Mr Canavan BL said that he had been instructed by the Respondent (during the lunch period prior to the resumption of the public hearing) to withdraw from representing him at the Adjudication Hearing. In a statement, provided through his solicitors, the Respondent asserted that:

"It was a privilege to represent and serve the people of Lisburn & Castlereagh City Council".

"At all stages I acted in the best interests of all constituents. At no time did I breach the code of conduct for councillors. These proceedings are a politically motivated attack on myself and my family. I have been denied a fair and proper hearing and my Article 6 rights have been breached. Representing the people of Lisburn and Castlereagh Council has been the greatest honour of my life."

In response to a query from the Legal Assessor about the reference to an alleged breach of Article 6, Mr Canavan BL clarified that the statement was that of the Respondent and not of his legal representatives.

The Legal Assessor advised the Assistant Commissioner to retire to consider the appropriateness of proceeding in the absence of the Respondent. After doing so, the Assistant Commissioner adjourned the Hearing for the remainder of the day, stating that he would hold an administrative review in private the following day (16 November 2023) to determine the arrangements for the continuation of the Adjudication.

At the direction of the Assistant Commissioner an email was sent to the Respondent's solicitor Mr Patrick Higgins, at 15.36 on Wednesday 15 November 2023, advising him that the Assistant Commissioner would hold a Pre-Hearing Review (PHR) at 9.30am on Thursday 16 November 2023. The email noted the Assistant Commissioner's request to the Respondent to attend the PHR either in person at the offices of the Local Government Commissioner for Standards or, if he was unable to attend in person, by a WebEx link that was provided to the Respondent and his solicitor in a separate email to each of them.

At 19.18 on Wednesday 15 November 2023, Mr Higgins responded by email:

"I have spoken to Mr Poots (the Respondent) by telephone this evening and made him aware of the contents of your email. Mr Poots has instructed me to advise the Assistant Commissioner that he will not be attending tomorrow morning either in person or remotely. He will also not be attending any future hearings".

Given the content of this email, the Assistant Commissioner then considered whether he should exercise his discretion to conduct Stages 1 and 2 of the Adjudication process (the findings of Fact and the Determination of any Breach of the Code) on paper in accordance with the provisions of Paragraph 25 and 25b of the Adjudication Procedures:²

Paragraph 25. The Commissioner has the discretion to adjudicate to determine whether there has been a breach without an Adjudication Hearing if he considers that he requires no further evidence and any one of the following circumstances apply;

Paragraph 25b. If the Respondent states that he does not intend to attend or wish to be represented at the Adjudication Hearing.

² Paragraph 10 of the Adjudication Procedures also provides that that the procedure for an Adjudication Hearing shall be such as the Commissioner considers appropriate in the circumstances of the case.

The Assistant Commissioner noted the position adopted by the Respondent and considered that he required no further evidence. Accordingly, at the PHR held on 16 November 2023, which the Respondent did not attend, the Assistant Commissioner decided that it was appropriate and a proportionate use of his resources to proceed to conduct Stages 1 and 2 in accordance with the procedures of paragraphs 25 to 27 of the Adjudication Procedures. The Assistant Commissioner also considered that, given his stated position, this would not be unfair or cause prejudice to the Respondent.

Although the Respondent had expressed the intention not to engage any further with the Adjudication, the Assistant Commissioner decided that he should send the Respondent a list of the facts, together with the other supporting evidence that he intended to take into account in reaching his decision, in order to afford the Respondent the further opportunity to submit written representations, should he choose to do so.

The Assistant Commissioner issued Directions on 16 November 2023 confirming the arrangements for the further conduct of the Adjudication, and that the Adjudication Hearing would reconvene on 9 January 2024. These Directions were sent to the Respondent's solicitors who replied on 21 November 2023 stating that the Respondent:

'has been advised of the notice and instructs that he will no longer be engaging with the Assistant Commissioner and will not be attending in January 2024 nor at any dates in the future.'

STAGE 1 - FINDINGS OF FACT

On 21 November 2023, the Assistant Commissioner sent the Respondent a List of Facts (and the other supporting evidence) that he intended to take into account in reaching his Decision, and the Respondent was given until 4pm on 13 December 2023 to submit any written representations. No representations were received from the Respondent. The same information was sent to the Deputy Commissioner who provided clarification in relation to the number of non-declarations and declarations made by the Respondent at the meetings of the Planning Committee referred to at paragraph 12 below.

Having considered:

1. The Investigation Report dated December 2021
2. Councillor Poots' Response Form dated 25 November 2022
3. Councillor Poots' Statement of Evidence dated 10 November 2023

4. Witness Statements:
 1. Ian Wilson: Former Lead Head of Planning at Lisburn and Castlereagh City Council
 2. Kate McCusker: Solicitor
 3. Andrew Weir: Process server
 4. Patrick Johnston: Planning consultant with PJ Design

5. Raymond Law: Resident of Comber Road, Hillsborough, County Down
6. David Young: Neighbour of Raymond Law
7. Jeffrey McWatters: Senior Investigating Officer with the Local Government Commissioner for Standards;

the Assistant Commissioner determined the Facts as follows:

1. Councillor Poots was elected in the local government elections held on 22 May 2014 as a representative of the Democratic Unionist Party (“DUP”).
2. Initially, he served in Lisburn City Council in shadow form until April 2015, when Lisburn and Castlereagh Councils merged as part of local government reforms. Thereafter he was a member of Lisburn & Castlereagh City Council (“the Council”). He did not stand for re-election at the local government elections held on 2 May 2019.
3. Councillor Poots signed an undertaking on 6 June 2014 that he had read and would observe the Local Government Code of Conduct for Councillors (“the Code”).
4. At all relevant times the Code applied to Councillor Poots.
5. Councillor Poots is the son of Edwin Poots MLA (DUP).
6. On appointment to the Council, the Respondent completed Declaration of Interest Forms on 20 June 2014, 22 March 2016 and 10 April 2018. In the Form for 10 April 2018, the Respondent recorded his employment by his father Mr Edwin Poots.
7. Councillor Poots was a member of the Council’s Planning Committee from 1 April 2015 to 2 May 2019; and served as Chair of the Committee between 19 June 2017 and 6 June 2018.
8. The Council has a Protocol for the operation of the Planning Committee. Paragraph 33 states that
*‘At the beginning of **every** meeting, Members will be asked to declare whether they have a pecuniary and/or significant private or personal non-pecuniary interest in any item on the agenda. Should a Member declare such an interest they must leave the meeting room for the duration of that item. Members will then be invited to return to the meeting room and notified of the Committee’s decision before the meeting reconvenes.’*

In addition, paragraph 70 of the Protocol states that

'The Lisburn & Castlereagh City Council Planning Committee will have access to legal advice on planning matters at each of its meetings.'

9. The records of the Council disclose that on 35 occasions between February 2016 and February 2018 Edwin Poots MLA spoke either in support of or against a planning application at a meeting of the Council's Planning Committee. The relevant date and planning numbers, together with the action taken by Councillor Poots (declaration/non-declaration), is set out in **Appendix A**. (These do not include meetings of the Planning Committee not attended by Councillor Poots.)
10. Edwin Poots MLA was interviewed on 5 July 2019 by Robert Bannon, an Investigator with LGES, in the course of which he stated that when his son (the Respondent) became a member of the Planning Committee he (Edwin Poots) was aware of a potential conflict of interest regarding the representations he made to the Planning Committee. Therefore, he asked his son to get clarity as to what his position would be. Edwin Poots stated that his son then spoke to the Director of Planning, Ian Wilson, who in turn spoke with the Council's Legal Advisor.
11. Edwin Poots also stated at his interview that the advice received, which was communicated to him by his son, was that he and his son were not to discuss the relevant planning issues, that his son was to make this clear at the meetings, and it was up to his son to decide on each application based on the merits of each case. Edwin Poots said that the legal advice was that *'it was entirely reasonable for his son to adjudicate on decisions that I am an advocate of provided there has been no interaction in the period before it.'*
12. On the 35 occasions when Edwin Poots MLA spoke either in support of or against a planning application, Councillor Poots did the following:
 1. On 20 occasions, he did not make any declaration with regard to his father's speaking on planning applications. He also remained in the Planning Committee and participated in decision making regarding the applications.
 2. On 15 occasions Councillor Poots made a declaration that his father would be speaking on a planning application, but he (Councillor Poots) did not believe this constituted a conflict of interest, as he had not pre-determined the outcome. He therefore stayed in the Planning Committee when the applications were discussed and participated in decision making regarding same.

3. On 4 occasions Councillor Poots declared that his father would be speaking on planning applications but that he (Councillor Poots) had not pre-determined the outcome. Councillor Poots then completed a declaration of interest form. He then stayed in the meeting when these applications were discussed and took part in decision making regarding same.
 4. On 3 occasions Councillor Poots used his casting vote on an application as Chairman of the planning Committee.
 5. On 2 occasions Councillor Poots requested speaking rights on behalf of his father.
 6. On 13 occasions Councillor Poots voted on an application in line with his father's representations. On the remaining 22 occasions Councillor Poots vote was not recorded.
 7. On 16 occasions Councillor Poots either proposed or seconded the material planning considerations to be recorded in the minutes of the Planning Committee.
13. Between April 2015 and March 2018, Kate McCusker, then a solicitor with Cleaver Fulton Rankin, Solicitors, was the main external legal adviser. A part of her role was to attend the meetings of the Planning Committee, and to provide advice on planning matters to councillors and to Council officials as and when required.
14. The evidence of Ms McCusker is that she spoke with Councillor Poots at a Planning Committee in 2017, and that she did so in the knowledge that he had been participating in the Planning Committees on a number of occasions when his father was speaking, either for or against, applications. She said she was also becoming more concerned as it was happening more frequently.
15. Ms McCusker spoke with Councillor Poots during a break in the Planning Committee meeting. She informed him that there could be an appearance of bias due to the fact that his father was speaking on specific planning applications at the same meeting, and that, for this reason, a reasonable member of the public might also conclude that he was approaching the matter with a closed mind. She also discussed pre-determination with Councillor Poots and provided advice to Councillor Poots in accordance with the Code and the document 'Application of the Councillor's Code of Conduct with regard to Planning Matters'. This latter document states at paragraph 35 *'that if a member has made up their mind on a planning application in advance of*

the planning committee meeting they must not take part in the debate and vote and they must leave the room.' This was the only occasion when Ms McCusker provided advice to Councillor Poots.

16. According to Ms McCusker, Councillor Poots stated that

1. he did not know when his father would be attending a Planning Committee meeting to speak on an application;
2. they did not discuss planning applications with each other;
3. he had not and would not pre-determine a planning application;
4. on this basis he did not think that he had a declarable interest that would prevent him from taking part and voting on the application;
5. he would declare on each occasion when his father was scheduled to speak on an application;
6. he had not predetermined any such application
7. he would determine the applications on the relevant facts.

17. In a telephone conversation on 9 April 2018 with Jeffrey McWatters, a Senior Investigating Officer in the Northern Ireland Public Service Ombudsman's Local Government Ethical Standards Directorate, Councillor Poots stated that he had done no wrong and that he had been told by Kate McCusker that his actions were *'in order'*.

18. Ms McCusker denies that she told Councillor Poots, at any time, that his actions were in order.

19. In a subsequent telephone conversation with Mr McWatters on 10 January 2019, Councillor Poots stated that he had been told that he had done nothing wrong and that Ian Wilson had told him that *'he had done everything 100% right'*.

20. Ian Wilson has no recollection of saying this to Councillor Poots. Mr Wilson held the position of Transition Programme Manager in the Council from late 2013/early 2014 until December 2015 when he became the Council's Lead Head of Planning (until March 2018). In his role, he developed the Council protocol on planning matters and organised training on this as well as the Code. According to Mr Wilson, Councillors were reminded of the protocol on declaring interests at the start of every meeting of the Planning Committee.

21. Allegations of a possible conflict of interest between Edwin Poots MLA and the Respondent in relation to planning matters were the subject of a report in the Belfast Telegraph on 26 April 2018. The report noted that Edwin Poots was a DUP MLA and former Health Minister, and that the Respondent was chair of the Council's Planning

Committee. It further reported that both persons denied any wrongdoing and stated that independent legal advice was taken on the matter which had at all times been followed.

22. Patrick Johnson, a planning consultant with PJ Design, and his son, were employed by Luke Poots to prepare and submit a planning application in respect of the property at 59 Comber Road, Hillsborough, County Down, which was owned by Councillor Poots and Edwin Poots.
23. Prior to the submission of a planning application, Patrick Johnson and Aidan Johnson met with Councillor Poots and Edwin Poots at 59 Comber Road, Hillsborough, County Down to discuss the application.
24. On 7 December 2017 the Council received planning application LA05/2017/1301/O (Form P1) from PJ Design which was for

“Proposed 3 no dwellings to replace existing and conversion to existing stone outbuilding at 59 Comber Road, Hillsborough”.

The applicant’s name was listed as Rachel M Gracey and the applicant’s address as 135 Hillsborough Road, Lisburn. PJ Design was recorded as the agent for the application. In Section 26 of the form, the person completing the form is asked:

‘Are you/the applicant/the applicant’s spouse or partner, a relative of a member of staff in the council or an elected member of the council or their spouse or partner?’

The response on the form was ‘yes’ and the entry ‘Luke Poots son’ was made on the form.

25. Section 42 of the Planning Act (NI) 2011 requires a planning application to be accompanied by an ownership certificate stating the current ownership of the land to which the application refers. In Form P1 at Section 27, Certificate A was initially completed and submitted with the application. Certificate C (likewise set out in Section 27) was not completed.

The relevant government website describes **Certificate A as follows – Sole Ownership and no agricultural tenants** - This should only be completed if the applicant is the sole owner of the land to which the application relates and there are no agricultural tenants.

Certificate C is described on the same website as follows – Shared Ownership (Some other owners/agricultural tenants known) - This should be completed if the applicant does not own all of the land to which the application relates and does not know the name and address of all of the owners and/or agricultural tenants.

26. Councillor Poots had instructed PJ Design that the planning application LA05/2017/1301/O was not to be made in his name and that it was to be made in his mother's maiden name, Rachel Gracey. He had also instructed PJ Design that neither his own address nor that of his parents was to be used in the application. The address used (135 Hillsborough Road) was a property owned by Patrick Johnson.
27. A P2 challenge (which related to the ownership of part of the land in question) was received in respect of application LA05/2017/1301/O by a third party.
28. The P2 challenge concerned the ownership of a lane leading to the land at 59 Comber Road, Hillsborough.
29. On 5 July 2018, the BBC reported that Councillor Poots had approached a neighbouring landowner to propose a deal to sell him an access strip to the land at 59 Comber Road, Hillsborough.
30. Raymond Law was the neighbouring owner of part of the lane leading to the land at 59 Comber Road, Hillsborough. In late 2017 or early 2018, Edwin Poots called to his home and offered him £8,000 for a strip of land so that Councillor Poots could build his own lane to access the land at 59 Comber Road, Hillsborough. Mr Law did not inform Edwin Poots if he would sell or not.
31. Approximately, one week later Councillor Poots called to Mr Law's home and gave him a pre-prepared handwritten note which stated as follows:

*'Land: £100 per acre grass silage land
Land: All hedges and drainage done
Land: £8,000 for strip of land to make lane same size as current lane
Active Farming: Active Farmer status to allow PPS21 building site for Mr Raymond Law worth £150,000-£200,000'*
32. Councillor Poots asked him to look at the note. There was no conversation about the contents of the note, but Councillor Poots asked that when he had made up his mind Mr Law should leave word at his mother and father's house.

33. Mr Law only read the note after Councillor Poots left. He interpreted the note as an offer:
- i. of £100 per acre for Councillor Poots to rent his land to cut silage;
 - ii. to trim the hedges on his land and put in drains to help stop flooding;
 - iii. of £8,000 to buy a strip of land from him; and
 - iv. of a site as an *'active farmer'*.
34. Mr Law was not an active farmer.
35. Shortly afterwards, Mr Law spoke with a neighbour, David Young, who part owned the lane and rented some of his land for silage. He gave Mr Young the handwritten note, telling him that he did not want to sell the land.
36. A number of weeks later Councillor Poots called to Mr Law's house and asked where the handwritten note was. Mr Law told him he had given it to Mr Young.
37. Mr Law decided not to sell his land but never informed Councillor Poots or Edwin Poots of this.
38. Edwin Poots MLA met with representatives of the Council, namely: Conor Hughes, Head of Planning and Capital Development and Donal Rogan, Director of Service Transformation, on 9 August 2018 to discuss application LA05/2017/1301/O.
39. An amended application was received by the Council from PJ Design on 31 August 2018. The description of the application had been changed to
- 'Proposed 2 no dwellings to replace existing at 59 Comber Road, Hillsborough'*.
- At his request, Councillor Poots was also added as an applicant alongside his mother and the applicants' address was changed to the home address of Ms Gracey and her husband Edwin Poots MLA. Section 26 of Form P1 identified Luke Poots as the son of Mrs Gracey.
40. A further amended application was received by the Council from PJ Design on 7 September 2018. On Form P1 Edwin Poots MLA had been added as an applicant alongside his wife and Councillor Poots. The address of the applicants, and the description of the application, was the same as the 31 August 2018 application.
41. Councillor Poots attended training on Guidance on the Code in June 2015, and attended Code of Conduct training in February 2018.

42. Councillor Poots failed to attend for interview despite ten requests to do so made by or on behalf of the Deputy Commissioner.

STAGE 2 - DETERMINATION ON BREACH OF THE CODE

Introduction

The evidential test for consideration of the facts found in this matter is whether or not it has been established, on the 'Balance of Probabilities', that there had been a failure to comply with the Code. The Assistant Commissioner has applied that test to his determinations of breach and has considered all of the evidence.

Although the Respondent instructed his legal representatives to withdraw from the Adjudication Hearing after the conclusion of the preliminary issue, the Assistant Commissioner has fully taken into account the response by the Respondent to the allegations against him set out in his Councillor Response Form and in his Statement of Evidence dated 10 November 2023. As previously outlined, the Assistant Commissioner was satisfied that it was appropriate to deal with the determination of breach of the Code in the absence of the Respondent and/or his legal representatives.

Application of the Code

The Assistant Commissioner has also taken into account the following general provisions of the Code in his determination of the alleged breaches:

1. The Code applies to all Councillors. Parts 1 to 8, which include Principles of Conduct, Rules of General Conduct, Rules relating to the Registration, Disclosure and Declaration of Interests, and Rules of General Conduct, came into force on 28 May 2014. The application of the Code with regard to Planning Matters came into effect on 1 April 2015 (1.1)³.
2. The Code is supplemented by detailed Guidance for Councillors published by the Commissioner in May 2017 (1.6).
3. The Code states that the public has the right to expect high standards of behaviour from Councillors who are obliged to ensure that their conduct complies with the Code (1.5).
4. The Code details the principles and rules of conduct that Councillors are required to observe when acting as a Councillor and in conducting council business, and states that a Councillor's behaviour will be judged against these standards of conduct (1.5).

³ The bracketed references at paragraphs 1 to 7 are to the relevant paragraph of the Code.

5. Every Councillor, and in this case the Respondent, must complete a declaration of acceptance of office before they can act as a councillor, and this declaration includes an undertaking that the Councillor has read and will observe the Code (2.3).
6. The Code makes it clear that it is a Councillor's responsibility to ensure that they are familiar with the Code and that they comply with it (2.6).
7. Part 3 of the Code outlines 12 principles of conduct which underpin the rules of conduct (3.1). These include the principles of Integrity, Objectivity and Honesty.

CONSIDERATION OF ALLEGED BREACHES OF THE CODE

Application of Common Facts

Of the Facts established, those numbered 1,2,3,4,5,6,7 and 41 are common to the consideration of each alleged breach of the Code.

1. Rules Relating to the Declaration of Non-Pecuniary Interests (4.3, 6.3, 6.4 and 4.16)

Paragraph 4.3

The Assistant Commissioner considered that, in the context of his findings of Fact, it was appropriate to consider this provision first. The Assistant Commissioner determined that the Respondent had breached paragraph 4.3 of the Code.

Reasons for determination

The Respondent had been elected in the local government elections held on 22 May 2014 as a representative of the Democratic Unionist Party (DUP). Initially, he served in Lisburn City Council in shadow form until April 2015, when Lisburn and Castlereagh Councils merged as part of local government reforms. Thereafter he was a member of Lisburn & Castlereagh City Council.

The Respondent had signed an undertaking on 6 June 2014 that he had read and would observe the Local Government Code of Conduct for Councillors.

The Respondent attended training on Guidance on the Code of Conduct for Councillors in June 2015, and attended Code of Conduct training in February 2018.

In his Declaration of Interest Form dated 10 April 2018, the Respondent recorded his employment by his father Mr Edwin Poots.

Paragraph 4.3 states that:

'You must review regularly (at least annually and when your particular circumstances change) your personal circumstances and take steps to mitigate any conflict of interest in relation to your functions as a councillor. Such conflict may arise as a result of circumstances such as a change of business interests, a change in direct or indirect pecuniary interest required to be declared under section 28 of the 1972 Act or involvement on a new committee.'

The Assistant Commissioner referred to the Northern Ireland Audit Office (NIAO) Good Practice Guide on Conflicts of Interest⁴ which describes how a conflict of interest may be actual or perceived, and where a perception of a conflict of interest can be just as significant as an actual conflict of interest:

'The key issue is whether there was a risk that a fair-minded outside observer, acting reasonably, would conclude that there was a real possibility of bias.'

'The interest... can also include the interests of close relatives or friends or associates who have the potential to influence the public official or Board member's behaviour.'

The NIAO Guidance also states that a 'close relative' includes a parent.

The Guidance identifies that:

'Actual, potential or perceived conflicts of interest can lead to doubt about the integrity of a public official or Board member and can impact on the reputation of the organisation itself. A conflict of interest that is concealed, even if unintentionally through ignorance of proper procedure, or managed poorly, created at best a risk of allegations or perceptions of misconduct.'

In relation to a meeting with the Respondent, Ms McCusker, in her Statement of Evidence, referenced her attendance note, which recorded that:

- legal advice was provided to the Respondent when it became apparent his father would be speaking at Planning Committee meetings, either in support of, or against, specified planning applications;
- she informed the Respondent there could be an appearance of bias due to the fact his father was speaking on specific planning applications at the same meeting where he was a member of the planning committee;
- she had stated that the test under case law [*Porter v Magill*⁵] was whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility' of bias - "*Basically, would a reasonable member of the public conclude that there was a real possibility of bias and that Luke Poots was approaching the decision with a closed mind due to the fact his father was speaking on that application*";
- she had discussed pre-determination with the Respondent; and
- advice was provided to the Respondent in accordance with the Code of Conduct and the document 'Application of the Councillor's Code of Conduct with regard to Planning Matters', which stated that if a member has made up their mind on a planning

⁴ The Northern Ireland Audit Office Good Practice Guide on Conflicts of Interest (paragraphs: 2.2, 2.3, 2.4, 2.5, 2.6 and 2.9) - www.niauditoffice.gov.uk/

⁵ [2001] UKHL 67

application in advance of the planning committee meeting, they must not take part in the debate and vote and they must leave the room.

In his Declaration of Interest form dated 10 April 2018, the Respondent had listed his father, Edwin Poots, as his employer, but despite this, and the father son relationship, and the advices he received, the Respondent had failed to either regularly review his personal circumstances and or take steps to mitigate the clear conflict of interest that existed.

This was apparent from a consideration of the Respondent's actions on the 35 occasions when Edwin Poots MLA spoke at the Planning Committee. Applying the test in *Porter v Magill* to those meetings, the Assistant Commissioner found that there could be an appearance of bias on the part of the Respondent.

The Assistant Commissioner determined that the Respondent should have declared a conflict of interest, which arose from his father's involvement in the Planning Committee meetings, then left the Meeting without taking part in the decision making process. The Respondent's role as Chair of the Planning Committee from 19 June 2017 to 6 June 2018 heightened his responsibility in this regard. Further, the Respondent should have carefully considered whether he should continue to be a member of the Planning Committee where his father made regular appearances to speak on Planning Applications.

The Respondent had therefore breached paragraph 4.3 of the Code.

Paragraphs 6.3 and 6.4:

The Code is explicit in relation to how Councillors should manage their private and non-pecuniary interests in connection with their role. The Code contains separate and distinct requirements for (a) the registration of personal interests (both financial and otherwise) and (b) the declaration of any significant private or personal non-pecuniary interest in a matter arising at a council meeting and (if appropriate) withdrawal from the meeting. The alleged breaches in this part related to requirement (b).

Paragraph 6.3:

"You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting".

Paragraph 6.4:

"You must declare any significant private or personal non-pecuniary interests in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or sub-committee meeting) when the matter is being discussed. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest".

The Assistant Commissioner also noted the provisions of paragraphs 4.13.10 to 4.13.14 of Guidance for Councillors and drew attention to paragraph 4.13.13 which states:

*“The requirements relating to disclosure and declaration of interests are complex. When deciding whether you are required to disclose or declare an interest you must consider whether there may be a perception that your interest may influence how you will vote or decide on the matter. **The key consideration is therefore not whether your decision would be influenced by your interest but whether a member of the public – if he or she knew all of the relevant facts - would perceive that the interest is such that it would be likely to influence your decision** (emphasis added).”*

The Respondent was a member of the Council’s Planning Committee from 1 April 2015 to 2 May 2019, and served as Chair of the Committee between 19 June 2017 and 6 June 2018. Over that time the Respondent had participated on 35 occasions when Edwin Poots MLA, the Respondent’s father, spoke either in support of or against a planning application. The Assistant Commissioner noted the breakdown of the Respondent’s actions during those Planning Committee Meetings (Appendix A sets out in detail the 35 occasions):

1. On 20 occasions, the Respondent did not make any declaration with regard to his father’s speaking on planning applications. He remained in the Planning Committee and participated in decision making regarding the applications.
2. On 15 occasions the Respondent made a declaration that his father would be speaking on a planning application. The Respondent, however, did not believe this constituted a conflict of interest, as he had not pre-determined the outcome. He therefore stayed in the Planning Committee when the applications were discussed and participated in the decision making.
3. On 4 occasions the Respondent declared that his father would be speaking on planning applications but that he had not pre-determined the outcome. The Respondent then completed a declaration of interest form and stayed in the meeting when these applications were discussed and took part in the decision making.
4. On 3 occasions the Respondent used his casting vote on an application as Chairman of the planning Committee.
5. On 2 occasions the Respondent requested speaking rights on behalf of his father.
6. On 13 occasions the Respondent voted on an application in line with his father’s representations. On the remaining 22 occasions the Respondent’s vote was not recorded.
7. On 16 occasions the Respondent either proposed or seconded the material planning considerations to be recorded in the minutes of the Planning Committee.

The Assistant Commissioner determined that:

- On 20 occasions, the Respondent had breached paragraphs 6.3 and 6.4 of the Code, where he had failed to declare an interest, had remained in the Planning Committee room and participated in decision making regarding the planning applications.
- On 15 occasions, the Respondent had breached paragraph 6.4 of the Code where he had made a declaration that his father would be speaking on a planning application, but he had remained in the Planning Committee room and participated in decision making regarding the planning applications.

Reasons for determination

In relation to paragraphs 6.3 and 6.4, the Assistant Commissioner found that the father and son relationship, and one where both were elected representatives, was sufficient to create a 'significant private interest' and one that was particularly important in the context of the public interest in the integrity of the planning decision making process.

During a telephone call on 9 April 2018, with Mr McWatters (a Senior Investigating Officer), the Respondent said that he *"had done nothing wrong"* in relation to the allegations in the complaint, and that Ms McCusker, a solicitor retained by the Council to advise councillors on their role in committees, had told him he had done nothing wrong.

In her statement, Ms McCusker described being aware of the Respondent participating in the Planning Committee meetings when his father Mr Edwin Poots was speaking on an application. She stated:

"Having been asked I spoke to him at a Planning Committee meeting in 2017, but I cannot be more specific than that. Prior to me speaking to Luke Poots I was aware that he had been participating in the Planning Committee on a number of occasions when his father was speaking on applications, and both Ian Wilson and I were becoming more concerned as it was happening more frequently. I spoke to Ian Wilson about this the evening I spoke to Luke Poots but I recall Ian Wilson and I discussed our concerns about this a number of times prior to me speaking to him, after Ian had asked me to do so. I provided advice to Luke Poots during a comfort break in the Chamber. It was just me and him in the conversation, given the nature of the matter I was discreet. Having been asked this is the only conversation I have ever had with Luke Poots about this issue".

Ms McCusker refuted the Respondent's assertion that she had told him he had done nothing wrong:

"I have been informed that Luke Poots told the LGES Directorate that I had previously told him his actions were "in order" regarding this issue. I never told Luke Poots this, at any time".

The Assistant Commissioner noted that the Respondent had provided no facts or evidence to support his assertion about Ms McCusker and his denial of wrongdoing. The Assistant Commissioner accepted Ms McCusker's witness statement to be an accurate account of the conversations with the Respondent.

The Respondent had informed the Investigation Team that he had been told by Mr Ian Wilson (former Head of Planning for the Council) that he *"had done everything 100% right regarding declaring interests at meetings of the Planning Committee"*. In his statement to the Investigation, Mr Wilson said he had no recollection of ever saying this to the Respondent.

In short, the Respondent's position was that that he received advice to the effect that the decision whether to participate in Planning Committee Meetings, where his father was speaking on a planning application, was one for him to make based on the merits of the case, that he should not pre-determine the case, and that he had acted correctly. However, this is inconsistent with the evidence of Kate McCusker and Ian Wilson, and where there was any

difference as to the advice offered and the actions that the Respondent should have taken, the Assistant Commissioner preferred their evidence.

The Assistant Commissioner also noted that, whilst the Respondent had disputed the accuracy of the note made by Ms McCusker in his Councillor Response Form, he had not elaborated on this. In addition, he was invited on ten occasions to attend for interview, at which he could have provided his comments on this issue, but he did not avail of these opportunities.

The Assistant Commissioner considered that the Respondent's conduct at Planning Committee Meetings was unlikely to be seen by the public as the Respondent acting fairly in a significant decision making process.

Although there might be circumstances when the disclosure and declaration of interests, and the necessary action to be taken, could be complex, this was not the case here. In this case the facts spoke for themselves. The core point in all of the Planning Committee meetings was that the Respondent failed to make declarations of interest, or else declared an interest in some Planning Applications, and yet stayed to participate in the decision making process on the Applications where his father, Edwin Poots MLA, had spoken.

The Respondent had received training in the provisions of the Code, as well as advice specifically directed to his conduct at meetings of the Planning Committee, but he had, for whatever reason, chosen to ignore or disregard his obligations. It was the Respondent's personal responsibility to comply with the Code, and he had plainly failed to do so during Planning Committee meetings over a significant period of time, between February 2016 and April 2018.

The Assistant Commissioner concluded that these repetitive breaches of the Codes by the Respondent displayed, at the least, an indifference on the part of the Respondent to the requirements of the Code.

Paragraph 4.16:

You must not:

- a. *"Use, or attempt to use, your position improperly to confer on, or secure, an advantage for yourself or any other person".*
- b. *"Use, or attempt to use, your position improperly to seek preferential treatment for yourself or any other person; or*
- c. *Use, or attempt to use, your position improperly to avoid a disadvantage for yourself or any other person, or to create a disadvantage for any other person".*

The Assistant Commissioner made no determination.

Reasons for no determination

This alleged breach of the Code is also categorised within the rules relating to decision making, and the factual matrix which is relevant to the Assistant Commissioner's findings of breach of

paragraphs 6.3 and 6.4 of the Code also apply here. However, in view of those breaches, the Assistant Commissioner has determined that it is unnecessary to make a finding in respect of a breach of paragraph 4.16.

2. Rules Relating to Decision Making (8.1 and 9.3)

Paragraph 8.1:

When participating in meetings or reaching decisions regarding the business of your council, you must:

- a. “Do so objectively, on the basis of the merits of the circumstances involved, and in the public interest.*
- b. Act fairly and be seen to act fairly.*
- c. Ensure that all parties involved in the process are given a fair hearing (insofar as your role in the decision making process allows).*
- d. Not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any decision”.*

Paragraph 9.3:

“Your role as a Councillor is to represent the views and aspirations of your community through development of the local development plan, discussions with developers and council planning officers or deciding on planning applications. The Code (and any associated guidance) is intended to assist you in balancing the interests of developers and interest groups with taking planning decisions, by applying your local knowledge and the advice and guidance of planning officers, in a fair, impartial and transparent way, for the benefit of the whole community. This Code applies to Councillors at all times when involving themselves in the planning process, including taking part in the decision-making meetings of the council or when involved in less formal occasions, such as meetings with officers or the public. It applies equally to local plan development and planning enforcement as it does to planning applications”.

The Assistant Commissioner determined that the Respondent had breached paragraphs 8.1 and 9.3 of the Code.

Reasons for determination

The Assistant Commissioner considered that it was appropriate to consider the Respondent’s conduct in respect of alleged breaches of 8.1 and 9.3 of the Code in the context of his analysis of breaches 4.3, 6.3 and 6.4. Central to all of these alleged breaches was the Respondent’s failure to make declarations and or to withdraw from meetings on those occasions noted at paragraph 12 of the Findings of Fact when his father, Edwin Poots MLA, attended and spoke in relation to planning applications.

The Assistant Commissioner again applied the test in *Porter v Magill* - “*would a reasonable member of the public conclude that there was a real possibility of bias*” on the part of the Respondent. He concluded there was adequate evidence to show a possibility of bias by the

Respondent, and or that that he had been making decisions in Planning Committee Meetings with a closed mind, due to the fact his father was speaking on planning applications. The Respondent had produced no evidence to the contrary.

Planning Application: LA05/2015/0342/O is an example of where a real possibility of bias existed. In that matter Edwin Poots MLA had made representations in support of this application contrary to the Planning Officer's recommendations. The Respondent remained in the meeting during his father's representations and participated in voting. The Respondent had chaired this meeting and had used his casting vote as Chair to support the application.

The Assistant Commissioner considered that it would be difficult, for such a member of the public, not to conclude the Respondent's conduct, in the Planning Committee meetings, showed that he was not acting fairly and showed a real possibility of bias.

The Assistant Commissioner stated that it was consistent with the reasoning set out in his determinations on breaches of 4.3, 6.3 and 6.4 of the Code, to find that the Respondent had breached paragraph 8.1 of the Code.

Paragraph 9.3 of the Code, which was within that part of the Code dealing directly with planning matters, also demanded the same adherence by the Respondent to act in a fair, impartial and transparent way. This had not been the case and the Assistant Commissioner found the Respondent had breached paragraph 9.3 of the Code.

3. Disrepute (4.2)

'You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute.'

The Assistant Commissioner determined that the Respondent had breached paragraph 4.2 of the Code.

Reasons for determination

In his consideration of this alleged breach, the Assistant Commissioner also had particular regard to his Findings of Fact 20 to 39.

In summary, these detail how a planning application in the name of Rachel M Gracey was made to the Council (LA05/2017/1301/O) relating to a property at 59 Comber Road, Hillsborough, which was owned by the Respondent and Edwin Poots MLA. The Respondent had engaged a planning consultant, PJ Design, to prepare and submit the planning application in his mother's maiden name, and he had instructed PJ Design that neither his own address nor that of his parents was to be used in the application. The address used (135 Hillsborough Road) was a property owned by Patrick Johnson.

The Application was, however, amended after a P2 challenge (which related to the ownership of part of the land in question – a lane leading to the lands at 59 Comber Road) was received.

An attempt was then made by the Respondent to purchase an access strip to the subject lands from a neighbour, Raymond Law, and that he gave Mr Law a handwritten note, which Mr Law read after the Respondent left. The note contained an offer of payment of £8,000 for the strip of land and referenced “*Active Farming: Active Farmer status to allow PPS21 building site for Mr Raymond Law worth £150,000-£200,000*”.

Mr Law, who is not an active farmer, gave the note to David Young, another adjoining land-owner. The Respondent later asked Mr Law about the whereabouts of the note and was told that it had been given to Mr Young. Mr Law decided not to sell his land but did not inform either the Respondent or Edwin Poots MLA of his decision.

An amended planning application was received by the Council on 31 August 2018. The Respondent had been added as an applicant alongside his mother, and the applicants’ address was changed to the home address of Ms Gracey and her husband Edwin Poots MLA. The Respondent was identified on the form as the son of Ms Gracey. A further amended application was received on 7 September 2018, which added Edwin Poots MLA as an applicant.

The Assistant Commissioner considered that this demonstrated that there had been at the outset of this application a conscious decision by the Respondent to conceal the identity of the actual applicant(s) for Planning Application. *The Assistant Commissioner agreed with the Deputy Commissioner that the onus on the Respondent to be open and transparent in the completion of the planning application was heightened given his role as a councillor, a member of the Planning Committee, and Chair of the Planning Committee at the time that the application was made.*

The Assistant Commissioner noted that the Respondent’s conduct in relation to planning application LA05/2017/1301/O had been the subject of a report in the Belfast Telegraph on 26 April 2018 and was a matter of public interest.

In all the circumstances of this planning application, the Assistant Commissioner was satisfied that the Respondent had brought his position as a councillor, and the Council, into disrepute.

The Assistant Commissioner said the Respondent’s breaches of the Code, as set out in his determination of the Respondent’s breaches of paragraphs 4.3, 6.3 and 6.4 of the Code, also provided substantial evidence that the Respondent had conducted himself in a manner that could reasonably be regarded as bringing his position as a councillor, and his council, into disrepute. A crucial factor was the Respondent’s deliberate and continued course of action, which ignored the requirements set out in the relevant sections of the Code and was contrary to the advice given to him by Ms McCusker and Mr Wilson.

Whilst Edwin Poots MLA was entitled to attend and make representations to the Planning Committee, it should have been self-evident to the Respondent that it was inappropriate for him to have any part in the determination of those planning applications about which his father had spoken.

4. Failure to Comply with the Commissioner's Requests (4.6)

'You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner's statutory powers.'

The Assistant Commissioner determined that the Respondent had breached paragraph 4.6 of the Code.

Reasons for determination

Despite ten requests to attend for interview in order to provide information to assist the Deputy Commissioner's investigation, the Respondent did not attend for interview.

The Assistant Commissioner considered the failure by the Respondent to comply with these numerous requests was self-evidently a breach by the Respondent of his obligations under paragraph 4.6 of the Code.

The Assistant Commissioner did not draw any adverse finding from the Respondent's decision to instruct his legal representatives to withdraw from further participation in the Adjudication Hearing after the determination of the preliminary issue, or from the fact that at no stage had the Respondent attended the hearing.

TO SUMMARISE:

The Respondent has breached the following sections of the Code:

- Paragraph 4.3
- Paragraph 6.3
- Paragraph 6.4
- Paragraph 8.1
- Paragraph 9.3
- Paragraph 4.2 and
- Paragraph 4.6

STAGE 3 - SANCTION

The Sanction Hearing was held in public on 15 February 2024. The Respondent was not present nor represented.

When the Adjudication Hearing opened on 15 November 2023 the Respondent's legal representatives were present although he was not in attendance. As already outlined the Hearing was adjourned after the Respondent's legal representatives, acting on his instructions, withdrew. The Assistant Commissioner subsequently determined Stages 1 and 2 of the Adjudication on paper, and the determination of Facts and the Respondent's Breaches of the Code have already been set out.

Prior to the Sanction Hearing Councillor Poots had been informed of all relevant developments through his solicitors, who had acknowledged receipt of all correspondence on his behalf.

The Assistant Commissioner carefully considered if it was appropriate to continue the Hearing to deal with Sanction in the absence of the Respondent. He was satisfied that the Respondent was aware of the Hearing, and that, in all the circumstances, it was appropriate to do proceed, not least because the Respondent had expressly confirmed his decision not to participate. The Assistant Commissioner noted that although the Respondent withdrew his legal representatives from the Adjudication Hearing on 15 November 2023, his solicitors had continued to be the Assistant Commissioner's point of contact for the Respondent, and the Assistant Commissioner was satisfied that the Respondent has had both the benefit of, and the opportunity to access, legal advice. The Legal Assessor also confirmed to the Assistant Commissioner that it was appropriate to continue with the Sanction Hearing.

The Assistant Commissioner had sent a copy of his decision on the Facts and Breach of the Code to the Respondent's solicitors and to the Deputy Commissioner on 1 February 2024, with an invitation to make submissions on Sanction. The Assistant Commissioner received submissions for the Deputy Commissioner (these are set out at Appendix B), but none were received from the Respondent.

SUBMISSIONS ON SANCTION

Mr Coll KC noted that there were no prior findings of breach of the Code against the Respondent, nor had there been any other investigation by the Deputy Commissioner into his conduct.

Mr Coll KC verbally supplemented his written submissions on the breaches of the Code which, he said, fell under four headings:

1. The non-declaration of non-pecuniary interests at paragraphs 4.3, 6.3 and 6.4 of the Code.
2. The rules relating to decision-making at paragraphs 8.1 and 9.3 of the Code.

3. Disrepute at paragraph 4.2 of the Code.
4. The failure to comply with the requests made on behalf of the Deputy Commissioner in the course of the investigation under paragraph 4.6 of the Code.

Mr Coll KC stated that the mitigating factors in the matter were limited by two inter-related factors, which meant that he denied himself an opportunity to present his perspective on the allegations, or to highlight other potentially mitigating factors.

First, the Respondent did not engage fully with the Deputy Commissioner during the investigation of this matter. Secondly, his decision not to participate fully in the Hearing of this matter and the related decision to withdraw his legal team from the Hearing on the first day.

He also noted the Respondent's apparent belief that his approach to declarations had been shaped by legal advice. However, the evidence from the person who provided that advice contradicted the Respondent's contention that the manner in which he conducted himself in the Planning Committee Meetings was in accordance with the Code and did not give rise to an appearance of bias.

Mr Coll KC drew attention to the fact that it appeared that not all of the 35 different planning committee matters referred to in the findings of Fact and Breach took place after the provision of the legal advice; approximately half occurred prior to the provision of the legal advice and half thereafter. In addition, Mr Coll KC suggested that, as a result of the advice that was provided, that there may have been a change in the Respondent's approach to the matters in the sense that declarations were then made although the Respondent remained at the meetings. However, it was difficult to be categorical about this and it was something that the Respondent could have addressed had he engaged with the Adjudication.

In relation to aggravating factors, Mr Coll KC contended that there were repeated failures to comply with the Code; multiple breaches of multiple provisions of the Code; and repeated breaches, in particular, of the rules relating to non-declaration of non-pecuniary interests. He also noted the finding that the Respondent's actions had brought the Council into disrepute, specifically in the context of planning application LA05/2017/1301/0.

Mr Coll KC said that the Respondent had intentionally failed to comply with the Code when approaching the issue of declaration and withdrawal at planning committee meetings, and that from the time he had received legal advice he was at the very least negligent in terms of his responsibilities under the Code. There also appeared to have been a willingness to deny the facts, despite clear evidence to the contrary. In addition, the Respondent had never accepted that he was in breach of his responsibilities under the Code. The Assistant Commissioner, he said, might also wish to consider if the Respondent had sought to unfairly blame other people, by asserting that he had relied on legal advice, although the Assistant Commissioner had determined that he did not receive advice to the effect that his actions were in accordance with the Code.

In considering sanction, Mr Coll KC said that this was somewhat of a unique case in terms of the number of breaches that had been determined, and those breaches had occurred over a sustained period of two years. Accordingly, he submitted that the appropriate and proportionate sanction must reflect the fact of multiple and wide-ranging breaches over that extended period of time. He referred to other decisions of the Commissioner set out in his submissions, noting that each case would turn on its own facts. Although there was no direct read across from these other decisions, they provided some parameters for consideration of the sanction in this case.

Mr Coll KC drew particular attention to the provisions of the Sanctions Guidelines relating to disqualification, which was the most severe option open to the Commissioner. Paragraph 19 stated that the factors which may lead to disqualification included one or more of the following:

"The respondent having deliberately failed to abide by the Code" (19(c));

"Repeated failures to comply with the Code by the respondent..." (19(d)); and

"Bringing the council into disrepute" and "whether the extent of the reputational damage to the Council is so serious as to warrant a disqualification" (19(g)):

Mr Coll KC also referred to the 'totality principle' which would allow the Assistant Commissioner to stand back and look at the overall seriousness and impact of the breaches, and take account of the public's concern, rather than looking at the seriousness and impact of each individual breach of the Code. Although the breaches in this matter were not coterminous, there was a large amount of overlap between them, and this should be taken into account.

Finally, although the Respondent was no longer a councillor, it was his submission that an appropriate period of time for disqualification to properly reflect the seriousness of this situation, the sustained period of time over which it occurred, the breadth of the breaches and the impact it has in terms of public concern and public confidence in the robustness of the return to local government level of planning processes in Northern Ireland, would be three and a half years.

With the Assistant Commissioner's permission, the Legal Assessor raised two points with Mr Coll KC relating to possible mitigations referred to in Appendix A of the Sanctions Guidelines. The Legal Assessor explained that although the Respondent had made the choice not to attend (and had had access to legal advice) he wanted to raise these points to ensure the fairness of the Hearing. Both points arose from a consideration of what the Respondent had said in his Councillor Response Form, his Written Statement, and comments to the Hearing made through his Counsel.

The first point arose from the Respondent's assertion that he acted at all times in the best interests of his constituents, and where one of the mitigating factors in Appendix A

encompassed a situation where the Respondent's actions may have involved a failure to comply with the Code but may have had some beneficial effect for the public interest.

In response Mr Coll KC stated that, whatever the Respondent thought, the Adjudication did not concern the merits or the outcome of the relevant planning decisions, but rather had to consider the process and perception of the Respondent's actions.

The second point arose from the fact that the Respondent was first elected in May 2014, and whether it could be that this fact, coupled with his chairship of the Planning Committee, could amount to mitigation by virtue of short service and inexperience.

Mr Coll KC stated that, whilst the Respondent was relatively fresh into elected office as a councillor, given the nature of the breaches and the overall circumstances the extent to which it may be relevant as a mitigating factor was somewhat limited.

DECISION ON SANCTION

The Assistant Commissioner had considered the Sanction Guidelines. He noted that the principal purpose of a sanction was the preservation of public confidence in local government representatives, and that a decision on sanction should also support the following objectives: the public interest in good administration; upholding and improving the standard of conduct expected of councillors; and the fostering of public confidence in the ethical standards regime introduced by the 2014 Act. Thus, any sanction imposed will be justified in the wider public interest and will be designed to discourage or prevent the Respondent from any future failures to comply with the Code and to discourage similar conduct by others.

Mitigating factors

The Assistant Commissioner agreed with Mr Coll's submission that it was difficult to determine any mitigating factors other than that the Respondent had no prior breaches of the Code. In coming to this conclusion, the Assistant Commissioner had fully considered the limited information provided by the Respondent, and the matters raised by the Legal Advisor, but he could not ascertain any additional mitigating factors.

The Assistant Commissioner had considered the length of service of the Respondent as a councillor and within the Planning Committee. Following election as a councillor, in May 2014, he had been appointed to the Council's Planning Committee in April 2015, after a year as a councillor. He became the Chair of that Committee in June 2017 after three years' service. The Assistant Commissioner believed the crux of the Respondent's conduct lay in his extensive failure to comply with the Code. He had read the Code, had received training on it, and had been given legal advice when performing his role in the Planning Committee. Further, at each meeting of the Planning Committee, the Council Protocol required the relevant rules on disclosure of interests and withdrawal from the proceedings to be read out. In spite of this, the Respondent had repeatedly not complied with the Code.

The Assistant Commissioner did not consider that 'length of time/experience' as a councillor was a mitigating factor in this case. The compliance with the Code was a fundamental

requirement for the Respondent to serve in the public office of a Councillor. It had been his personal responsibility to do so and he had failed in that regard.

The Assistant Commissioner reiterated Mr Coll's submission:

"this is a personal responsibility matter, all persons elected to public office in local councils have that responsibility. It is theirs and theirs alone in the final analysis".

The Assistant Commissioner found that the Respondent's conduct was not only a personal failure but was also a failure that brought his Council into disrepute. The Assistant Commissioner had considered and agreed with Mr Coll's submission:

"It is further submitted that there appears to have been a willingness to deny the facts, despite clear evidence to the contrary. In addition, the Respondent has not at any stage accepted that he was in breach of his responsibilities under the Code of Conduct and indeed, he continued to deny any breach of the Code up to and including the moment in time when his legal team withdrew from the proceedings on 15th November 2023 on his instructions".

These were multiple and wide-ranging breaches over an extended period. The Assistant Commissioner considered the evidence showed the Respondent's conduct to be deliberate and that short service or inexperience was not a mitigating factor.

The Respondent contended that he acted at all times in the best interests of his constituents. It was unnecessary to make a finding on this but, even assuming this to be true, the Assistant Commissioner did not accept that this would amount to a mitigating factor in the present case. Although the interests of some constituents may have been served by the Respondent's actions, that did not mean that his actions could be said to have been in the public interest. Rather his actions had to be viewed in the context of the findings of multiple breaches of the Code, and the impact that those breaches had on public confidence in local government.

Aggravating Factors

The Assistant Commissioner noted Mr Coll's submissions and determined that the aggravating factors in this case were as follows:

- There were multiple breaches of the Code (acknowledging that some of the breaches were closely inter-related through common facts);
- The breaches occurred over a prolonged period;
- The breaches continued after and despite the legal advice that was given to the Respondent;
- The Respondent's actions were in breach of the Council's Protocol for the operation of the Planning Committee;
- The Respondent used his casting vote Chair of the Planning Committee on 3 occasions when his father made representations, and on one of these occasions it was to support an application that was contrary to the planning officer's recommendations;
- Planning is a matter of ongoing public interest;

- The Respondent's breaches of the Code had also brought the Council into disrepute;
- There had been substantial non-cooperation with the investigation;
- The Respondent continued to deny that he had done anything wrong despite the clear contrary evidence.

Sanction

The Assistant Commissioner stressed that any sanction imposed must be justified in the wider public interest of preserving public confidence in local government representatives. The Assistant Commissioner had reminded himself that the purpose of Sanction was not to punish the Respondent, and that it should be designed to discourage or prevent future failings to comply with the Code or to discourage similar conduct by other Councillors.

The Assistant Commissioner had also considered the Commissioner's previous decisions involving disqualification including those outlined in the Deputy Commissioner's submissions on Sanction (Appendix B) which provided guidance on an appropriate sanction and which reflected the circumstances and seriousness of the breaches in the individual cases.

The Assistant Commissioner considered the available sanctions:

1. No action – this was not an appropriate sanction given the nature and extent of the Respondent's breaches.
2. Censure – likewise this was not an appropriate sanction in view of the findings of the Assistant Commissioner.
3. Because the Respondent was no longer a councillor, partial suspension and suspension were not available to the Assistant Commissioner.
4. Disqualification - this was the most severe option open to the Assistant Commissioner.

The Assistant Commissioner considered that the aggravating factors in this case so greatly outweighed any mitigating factors and, taking into account the extent and severity of the breaches of the Code, that disqualification was the only sanction that could be imposed in order to ensure the preservation of public confidence in local government. The imposition of this significant sanction and the length of the disqualification was intended to highlight the seriousness of his breaches of the Code and to discourage any similar conduct on the part of others.

The Assistant Commissioner disqualified the Respondent for a period of 4 years from being or becoming a Councillor and the disqualification is effective from the date of this written decision.

The Assistant Commissioner said this was unlike any previous Adjudications. An essential factor in this Adjudication had been the numerous breaches of the key provisions of the Code, which were fundamental to ensuring public confidence in the operation of Local Government and decision making, especially in the area of planning. The conduct by the Respondent had

been deliberate, it had flown in the face of legal advice and the Council's own Protocol, and had extended over a prolonged period. In those circumstances, the Assistant Commissioner considered that the length of disqualification had to reflect the seriousness of the matter, and in that respect, the period of disqualification had to be towards the upper end of what was permissible.

The Assistant Commissioner also drew attention to the statement from the Respondent following his withdrawal of legal representation at the Hearing on 15 November 2023:

"It was a privilege to represent and serve the people of Lisburn & Castlereagh City Council".

"At all stages I acted in the best interests of all constituents. At no time did I breach the code of conduct for councillors. These proceedings are a politically motivated attack on myself and my family. I have been denied a fair and proper hearing and my Article 6 rights have been breached. Representing the people of Lisburn and Castlereagh Council has been the greatest honour of my life."

The Assistant Commissioner said the Adjudication process had been impartial, open and transparent throughout, – there had been no political motivation to attack the Respondent or his family, nor had his Article 6 rights been breached. The Legal Assessor had ensured, in the absence of the Respondent, that the Hearing was conducted in a fair and efficient manner, and that it took account of his contribution to that process.

The Respondent had been legally represented until 15 November 2023. Following his withdrawal of his legal representation, he was kept informed of the further progress of the Adjudication and had been provided with the opportunity to attend and/or to provide representations to the Sanction Hearing. His response, however, had been that he did not intend to participate further in the Adjudication process.

The overriding obligation on the Assistant Commissioner was to conduct the Adjudication in a fair and efficient manner, and solely in accordance with the ethical standards framework based on the Code. That had been the Assistant Commissioner's sole consideration throughout the Adjudication.

COMMENT

The Assistant Commissioner was concerned about the extent to which Lisburn & Castlereagh City Council had adequately monitored its Planning Committee, to ensure that it was being conducted with proper regard for the Code and in compliance with the Council's Planning Protocol, during the period that the Respondent was a member and, at times, the Chair of that Committee. From the witness evidence of Ms McCusker and Mr Wilson it was apparent there had been ongoing concern about the actions of the Respondent.

The Assistant Commissioner observed that this concern had been in existence over an extended period, and it was therefore surprising that the Council appeared not to have taken sufficient action to ensure compliance with the Code and its own Protocol. In this case the

Respondent's actions which had been found to be in breach of the Code and the Protocol had inevitably damaged public confidence in the work of local government.

LEAVE TO APPEAL

Pursuant to section 59 (14) of the Local Government Act (Northern Ireland) 2014 Councillor Poots may seek the permission of the High Court to appeal against a decision made by the Assistant Commissioner, which must be made within 21 days of the date that he receives written notice of the Assistant Commissioner's decision.

A handwritten signature in blue ink, appearing to read 'Ian A Gordon'.

Ian A Gordon
Assistant Northern Ireland Local Government Commissioner for Standards
4 March 2024

APPENDIX A

COUNCILLOR LUKE POOTS

Table of declarations (as referred to in paragraph 11 of the Findings of Fact)

Date and planning application no	Declaration / non-declaration
1. 5 March 2018 (LA05/2017/0682/O)	Declaration made
2. 1 February 2016 (S/2015/0008/O)	Declaration made
3. 4 April 2016 (LA05/2015/0696/O)	Declaration made
4. 4 April 2016 (LA05/17/0977/F)	Declaration made
5. 4 April 2016 (LA05/2015/0298/O)	Declaration made
6. 4 July 2016 (LA05/15/0750/O)	No declaration ⁶
7. 1 August 2016 (LA05/15/0765/F)	No declaration
8. 3 October 2016 (S/2014/0910/F)	No declaration
9. 7 November 2016 (LA05/2015/0033/F)	No declaration

⁶ The Committee Meeting minutes dated 4 July 2016 record that the Respondent advised “that he had attended meetings in respect of Application Number LA05/15/0750/O and had called the item in on behalf of another Councillor...” but no declaration, per se, was made.

10. 7 November 2016 (LA05/2016/0542/F) (also considered by PC on 8 May 2017)	No declaration
11. 5 December 2016 (LA05/2016/0648/F)	No declaration
12. 5 December 2016 (LA05/2016/0002/O)	No declaration
13. 6 February 2017 (LA05/2015/0570/O)	No declaration
14. 6 March 2017 (LA05/2015/0916/F)	No declaration
15. 3 April 2017 (LA/05/2015/0815/F)	No declaration
16. 3 April 2017 (LA/05/2016/0692/O)	No declaration
17. 3 April 2017 (LA05/2016/0676/F)	No declaration
18. 3 April 2017 (LA05/16/0627/F)	No declaration
19. 8 May 2017 (LA05/2015/0178/F)	No declaration
20. 8 May 2017 (LA05/2016/0518/F)	No declaration
21. 8 May 2017 (LA05/2016/0612/RM)	No declaration
22. 5 June 2017 (LA/05/2015/0568/F)	No declaration
23. 5 June 2017 (LA05/2016/0513/F)	No declaration

24. 7 August 2017 (S/2008/0537/RM)	Declaration made
25. 4 September 2017 (LA05/2017/0500/O)	Declaration made
26. 4 December 2017 (LA05/2017/0552/F)	Declaration made
27. 4 December 2017 (LA05/2015/0345/F)	Declaration made
28. 4 December 2017 (LA05/2017/0633/O)	Declaration made
29. 4 December 2017 (LA05/2015/0342/O)	Declaration made
30. 5 March 2018 (LA05/2017/0678/O)	Declaration made
31. 5 March 2018 (LA05/2017/1140/O)	Declaration made
32. 9 April 2018 and 4 June 2018 (LA05/2016/1050/F)	No declaration
33. 9 April 2018 and 4 June 2018 (LA05/2016/1050/F) This essentially reproduces entry 32, above.	See above
34. 6 August 2018 (LA05/2017/0097/F)	Declaration made
35. 3 September 2018 (LA05/2017/0977/F)	Declaration made

APPENDIX B

CASE REFERENCES: C00196, C00287, C00292, C00396, C00397
LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 2014
IN THE MATTER OF COUNCILLOR LUKE POOTS (THE RESPONDENT)

DEPUTY COMMISSIONER'S SUBMISSIONS ON SANCTION

Introduction

1. These submissions have been prepared by the Deputy Commissioner further to the Acting Commissioner's finding in this matter of a breach of seven provisions of the Code of Conduct for Councillors by the Respondent, Luke Poots. The provisions, which are listed in the order in they are found in the Acting Commissioner's findings, are:
 - i. Paragraph 4.3: *"You must review regularly (at least annually and when your particular circumstances change) your personal circumstances and take steps to mitigate any conflict of interest in relation to your functions as a councillor. Such conflict may arise as a result of circumstances such as a change of business interests, a change in direct or indirect pecuniary interest required to be declared under section 28 of the 1972 Act or involvement on a new committee"*.
 - ii. Paragraph 6.3: *"You must also declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting"*.
 - iii. Paragraph 6.4: *"You must declare any significant private or personal non-pecuniary interests in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or sub-committee meeting) when the matter is being discussed. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest"*.
 - iv. Paragraph 8.1: *"When participating in meetings or reaching decisions regarding the business of your council, you must: (a) "Do so objectively, on the basis of the merits of the circumstances involved, and in the public interest. (b) Act fairly and be seen to act fairly. (c) Ensure that all parties involved in the process are given a fair hearing (insofar as your role in the decision making*

process allows). (d) Not prejudge or demonstrate bias, or be seen to prejudge or demonstrate bias, in respect of any decision”.

- v. Paragraph 9.3: *“Your role as a Councillor is to represent the views and aspirations of your community through development of the local development plan, discussions with developers and council planning officers or deciding on planning applications. The Code (and any associated guidance) is intended to assist you in balancing the interests of developers and interest groups with taking planning decisions, by applying your local knowledge and the advice and guidance of planning officers, in a fair, impartial and transparent way, for the benefit of the whole community. This Code applies to Councillors at all times when involving themselves in the planning process, including taking part in the decision-making meetings of the council or when involved in less formal occasions, such as meetings with officers or the public. It applies equally to local plan development and planning enforcement as it does to planning applications”.*
 - vi. Paragraph 4.2: *“You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor, or your council, into disrepute”.*
 - vii. Paragraph 4.6: *“You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner’s statutory powers”.*
2. The reasons for the Acting Commissioner’s findings on breach are noted at pages 20ff of his report, where they are presented under four headings: (i) rules relating to the non-declaration of non-pecuniary interests (paras 4.3, 6.3, and 6.4); (ii) rules relating to decision-making (paras 8.1 and 9.3); (iii) disrepute (para 4.2); and failure to comply with the Commissioner’s requests (and para 4.6).
 3. These submissions outline the Deputy Commissioner’s position on the sanctions that ought now to be imposed for the breaches in question. It is emphasised at the outset that the Deputy Commissioner considers that the breadth of the breaches (and, indeed, the proliferation of breaches in respect of non-declarations of interests) is such that disqualification for a period of time not exceeding three and a half years is merited.
 4. The Deputy Commissioner would confirm that these submissions have been prepared in the light of the Local Government Commissioner’s [Adjudication Procedures](#) (at paragraphs 67-68) and [Sanctions Guidelines](#). They are made on the understanding

that they may be augmented by oral submissions at the sanctions hearing in this matter that is to be held on 15 February 2024.

The Adjudication Procedures

5. Paragraph 67 of the Adjudication Procedures requires that the Deputy Commissioner do the following:

- i. Provide information to the Acting Commissioner about any known previous breaches of the Code of Conduct by the Respondent.
- ii. Draw to the attention of the Acting Commissioner any mitigating factors. Factors that may be taken into account in this regard are noted at Appendix A of the Sanctions Guidelines.
- iii. Draw to the attention of the Acting Commissioner any aggravating factors. Factors that may be taken into account in this regard are also noted at Appendix A of the Sanctions Guidelines.

6. Paragraph 68 of the Adjudication Procedures references section 59(3) of the Local Government Act (Northern Ireland) 2014, which governs sanctions. That section reads:

“59—(1) The Commissioner may make an adjudication on any matter by deciding whether or not any person to which that matter relates has failed to comply with the code of conduct.

...

(3) Where the Commissioner decides that a person has failed to comply with the code of conduct, the Commissioner must decide whether no action should be taken or whether the nature of the failure is such that the Commissioner should—

(a) censure the person;

(b) suspend or partially suspend the person from being a councillor;

or

(c) disqualify the person for being, or becoming (whether by election or otherwise), a councillor.

...

(6) Where the Commissioner makes such a decision as is mentioned in subsection (3)(c), the Commissioner must disqualify the person for being,

or becoming (whether by election or otherwise), a councillor for such period as the Commissioner thinks appropriate but not exceeding five years”.

The Respondent’s Circumstances

Known previous breaches of the Code of Conduct

7. The Deputy Commissioner can confirm that there were no prior breaches of the Code by the Respondent. This point is, however, to be read alongside the fact that the breaches in this case were sustained and occurred between 2016-2018. This is not, thus, a case of a “once-off”, time-limited breach.

Mitigating factors

8. The scope for the Deputy Commissioner to outline mitigating factors in this matter is limited by reason of two, related factors.
9. The first is that Luke Poots did not engage fully with the Deputy Commissioner during the investigation in this matter – indeed, the Acting Commissioner has made a finding of breach of paragraph 4.6 of the Code of Conduct on this basis. In short, while there was some limited engagement from the Respondent at the outset of the investigation process, he did not attend for further interview despite ten requests that he do so. Such interviews would have given the Respondent an opportunity to present his side of the case and to highlight, what might now be regarded as, mitigating factors.
10. The second factor was the Respondent’s decision not to participate fully in the hearing of this matter and his related decision to withdraw his legal team from the hearing on its first morning. While the Acting Commissioner has stated at page 29 of this report that he did not draw any adverse finding from the Respondent’s decision to withdraw his legal team, the fact that the Respondent withdrew his legal team inevitably meant that he was unable to test and to present evidence at the hearing. In those circumstances, he again denied himself the chance to raise, what might now be regarded as, mitigating factors.
11. Without prejudice to the above points – and bearing in mind the content of Appendix A in the Sanctions Guidelines – the Deputy Commissioner would again note that there were no prior findings of a breach of the Code against the Respondent or, indeed, any investigation into him. The Deputy Commissioner would also note the Respondent’s apparent belief that his approach to declarations had been shaped by legal advice – albeit the evidence of, for instance, Kate McCusker contradicts the suggestion that he

had been advised that he would be acting in accordance with the Code by acting as he did.

Aggravating factors

12. The Deputy Commissioner would refer to Appendix A in the Sanctions Guidelines and would note the following:

- i. Repeated failures to comply with the Code. This is a case in which there have been multiple breaches of multiple provisions of the Code. There were repeated breaches, in particular, of rules relating to the non-declaration of non-pecuniary interests (paras 4.3, 6.3, and 6.4 of the Code).
- ii. Actions bringing the Council into disrepute. A finding to this effect was made in relation to paragraph 4.2 of the Code and planning application LA05/2017/1301/O.
- iii. An intentional failure to comply with the Code. The Deputy Commissioner is of the view that Luke Poots' intentionally failed to comply with the Code when approaching the issue of declaration and withdrawal. Given the evidence of Ms McCusker, he was at the very least negligent in terms of his responsibilities under the Code.
- iv. A willingness to deny the facts despite clear evidence to the contrary. The Respondent has not at any stage accepted that he was in breach of his responsibilities: indeed, he continued to deny any breach up to and including the moment that he instructed his legal team to withdraw from the hearing on 15 November 2024.
- v. Seeking unfairly to blame other people. This took form in the Respondent's reliance upon legal advice when the evidence indicates that he did not, in fact, receive advice that he would be acting in accordance with the Code.
- vi. Persisting with a pattern of behaviour that involves repeatedly failing to abide by the provisions of the Code. The evidence shows that Ms McCusker advised the Respondent about the potential difficulties associated with his participation in meetings of the planning committee. He wilfully continued to sit at meetings at which his father made representations and failed to make appropriate declarations on multiple occasions.

Appropriate sanction

13. This is plainly a unique case in terms of the number of breaches that have been found by the Assistant Commissioner. Moreover, the breaches occurred over a period of some two years. This is, thus, a case in which the appropriate sanction must reflect the fact of multiple and wide-ranging breaches, whilst being proportionate in all the circumstances.
14. Pages 2-5 of the Sanctions Guidelines note the options that are open to the Acting Commissioner at this stage, namely: (a) no action; (b) censure in such terms as the Acting Commissioner thinks is appropriate; (c) partial suspension for such period of time as the Acting Commissioner thinks appropriate, but not exceeding one year; (d) suspension for such period of time as the Acting Commissioner thinks appropriate, but not exceeding one year; and (e) disqualification for such period as the Acting Commissioner thinks appropriate but not exceeding five years.
15. Sanctions have previously been imposed by the Acting Commissioner in a wide number of cases raising a diverse number of issues, which include:
 - i. [Brian Duffin](#). Conviction for sexual assault bringing Council in disrepute (para 4.2 of Code) resulting in five-year disqualification.
 - ii. [Ian Stevenson](#). Conviction for sexual assault bringing Council in disrepute (para 4.2 of Code) resulting in four-year disqualification.
 - iii. [Patrick Clarke](#). Convictions for fraud, and sexual assault (breach of paras 4.1 and 4.2 of Code) resulting in disqualification for three years.
 - iv. [Derek Hussey](#). Drink driving conviction (breach of para 4.2 of the Code) resulting in 15-months disqualification.
 - v. [Mervyn Rea](#). Failure to declare pecuniary interest when addressing planning committee in support of application (breach of paras 6.1, 6.2, 4.16(a) of the Code) resulting censure for reason that there had been an honestly held belief that no breach of the Code (Respondent also engaged in investigation process).
 - vi. [Alderman John Smyth](#). Case of non-declaration of non-pecuniary interest. Minor infraction found, resulting in partial suspension from planning committee for 3 months. The facts were that Mr Smyth had failed to make a declaration of interest at a meeting of his council's planning committee at

which his employer, Trevor Clarke MLA, had made representations in relation to (unsuccessful) planning applications. Mr Smyth had engaged with the investigation into the complaint against him.

- vii. [Declan Boyle](#). Failure to declare interests in relation to HMOs in the 'Holylands Area' of Belfast whilst sitting in meetings of Belfast City Council (breach of paras 5.2, 6.1, 6.2, 6.3, and 4.6 of the Code), resulting in censure. In this case, the Deputy Commissioner and Respondent had prepared a joint position paper for the Acting Commissioner in which Mr Boyle acknowledged that he had breached paras 5.2, 6.1, 6.2, 6.3, and 4.6 the Code, but not 4.2 on disrepute (the Deputy Commissioner did not pursue breach of that provision). The Acting Commissioner preferred censure as the preferred sanction, "with some hesitation", given the wider context to the case and the fact that, among other things, Mr Boyle had acknowledged his breaches of the Code.
- viii. [Jim Rodgers](#). Failure to declare interests in Belmont Bowling club and Ashfield school (breach of paras 5.2, 5.3, 6.3, 6.4 and 6.9) resulting in partial suspension for three months. In this instance, a sanction of partial suspension was imposed because of Mr Rodgers' exemplary record of public service, absent which a full suspension would have been imposed.
- ix. [Marc Collins](#). Tweet about John Finucane and his family (breach of paras 4.13(a), 4.2 and 4.6 of the Code) resulting in eight-month suspension.

16. The above, prior rulings provide some parameters for consideration of sanction in this case. In the first instance, it is of course apparent that this is not a case that overlaps with criminal convictions, and the Deputy Commissioner therefore submits that the fullest sanction of five years would not be appropriate. However, it is also true that this is not a case of a "once-off" breach or one in which the Respondent has acknowledged breach and engaged with the investigation process. The breaches in this case have multiple factual bases and the investigation into the complaints against the Respondent was faced with his obstruction/non-engagement. Comparisons with the other non-declaration cases are thereby imperfect. So, it is respectfully submitted, are comparisons with cases about social media commentary and other forms of expression.

17. The Deputy Commissioner would also refer to paragraph 19 of the Sanctions Guidelines, which relates to disqualification. This refers to disqualification in the context of, among other things, a Respondent "*having deliberately failed to abide by the Code*" (point (c)); "*Repeated failures to comply with the Code*" (point (d)); and

“bringing the Council into disrepute” (point (g)). In the Deputy Commissioner’s submission, the presence of such factors, allied to the aggravating factors that include a failure to engage with the investigation, point towards disqualification for a sustained period of time. As above, it is submitted that an appropriate period of time would be three and a half years.

Peter Coll KC
Gordon Anthony BL
9 February 2024