



Northern Ireland

# **Local Government Commissioner for Standards**

## **Fact Sheet: Adjudication Hearings**

### **Who is the Northern Ireland Local Government Commissioner for Standards?**

The Northern Ireland Local Government Commissioner for Standards is Ms Margaret Kelly. Ms Kelly is also the Northern Ireland Public Services Ombudsman and the Northern Ireland Judicial Appointments Ombudsman. The Commissioner may, in certain circumstances, appoint an Acting Commissioner for Standards to undertake an adjudication on her behalf.

### **What is the Commissioner's function?**

The function of Commissioner was introduced by the Local Government (NI) Act 2014 (the 2014 Act) to act as an independent investigator and adjudicator to consider complaints about alleged breaches of the Northern Ireland Local Government Code of Conduct of Councillors (the Code).

The 2014 Act established an ethical governance framework designed to maintain high standards of behaviour for members of local councils. All councillors are required to act in accordance with the Code. Failure to comply with the Code may lead to a councillor being censured, suspended from office or disqualified from being a councillor.

Complaints that the Code has been breached can be made to the Commissioner in writing. The Commissioner does not herself investigate complaints; it is the Deputy Commissioner and his staff in the Local Government Ethical Standards (LGES) Directorate who undertake investigations. One outcome of such an investigation can be a referral to the Commissioner for an adjudication decision.

### **Who decides whether a Councillor has breached the Code?**

Only the Commissioner herself or someone appointed by her as Acting Commissioner<sup>1</sup> can decide whether a Councillor has breached the Code. That decision will be made by the Commissioner following an Adjudication Hearing. The Hearing will usually be held in public unless exceptional circumstances apply. The Commissioner will be advised by a qualified Legal Assessor who does not take part in the decision-making.

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<sup>1</sup> All references here to the Commissioner include references to an Acting Commissioner where the Commissioner has formally delegated authority under paragraph 14(2) of Schedule 2 of the Public Services Ombudsman (NI) Act 2016

## What sanctions can the Commissioner impose?

The Commissioner may decide there has been no failure to comply with the Code. If she finds there has been a failure to comply with the Code she can decide to:

- take no action;
- censure that councillor, this means she will formally criticise the councillor's conduct;
- suspend or partially suspend the councillor for up to one year; or
- disqualify a councillor (or former councillor) for up to 5 years.

Further details can be found in the "Information for Councillors" section of the Commissioner's website at [www.nipso.org.uk/nilgcs](http://www.nipso.org.uk/nilgcs).

## What happens on the day of the Adjudication Hearing?

Prior to the Hearing the Commissioner will issue the councillor with a "Notice of the Intention to Hold a Hearing" indicating any preliminary steps to be taken and outlining the likely procedure at the Adjudication Hearing. The Notice will ask the Councillor to provide information including:

- whether they accept that there has been a failure to follow the Code;
- whether they intend to attend the Hearing;
- will they be represented at the Hearing, and if so, who will represent them;
- if they wish to call witnesses and, if so, to provide details of the matters on which their witnesses would give evidence;
- details of any facts contained in the investigation report with which they disagree and the reasons for their disagreement;
- whether they consider any part of the Hearing should be held in private; and
- any special requirements which have to be met to enable them to fully participate in the Hearing.

At the commencement of the Adjudication Hearing the Commissioner will further outline the procedures which she will follow that day.

Adjudication Hearings will generally be conducted as follows:

- the Commissioner will first determine the relevant facts,
- she will then determine whether, on those facts, there has been a failure to follow a provision in the Code and finally,
- if a breach of the Code has been found, she may determine what sanction to apply.

For further details please refer to the "Information for Councillors" section of the Commissioner's website.

## Can a councillor be represented at the Adjudication Hearing?

Yes. The councillor may appear in person or be represented by counsel, solicitor or any other person. The councillor is asked to inform the Commissioner's office who is representing them in advance of the Hearing.

### **What happens if a councillor chooses not to attend the Adjudication Hearing?**

In the event of non-appearance by the Councillor or any witness the Commissioner may deal with the matter in their absence. If a Councillor decides not to attend he or she can make a written submission to the Commissioner, which the Commissioner will consider before making her decision.

### **Can travel, expenses and costs be paid for?**

The Commissioner is unable to pay the expenses of a councillor whose conduct is being considered by the Adjudication Hearing. However, the Commissioner may pay reasonable expenses and allowances to witnesses.

### **Are the Adjudication Hearings open to the public and press?**

In most circumstances, the Adjudication Hearing is held in public. However, it should be noted that the use of cameras, video or recording equipment is not allowed during the proceedings. A stenographer will be present to take the formal record of the proceedings.

The Commissioner may decide that all or part of the Adjudication Hearing should be held in private. Where a councillor accepts the investigation findings and the Commissioner considers that she needs no further evidence, she may also decide that she will make her decision based solely on written representations. In such a case, the Adjudication Hearing will be held only to consider the sanction to be applied.

### **How can I find out when and where an Adjudication Hearing is being held?**

Full details of the date and location are published on the Commissioner's website as soon as possible after the investigation is completed and the matter is referred to the Commissioner for adjudication. Wherever possible the Adjudication Hearing will take place within the area of the council of which the councillor concerned is a member. For further details please refer to the "Hearings and Adjudication Decisions" section or contact the Commissioner's office.

### **What happens if a councillor resigns, or indicates an intention to resign before the date of the Adjudication Hearing?**

A resignation will not result in the cessation of an investigation or the abandonment of an Adjudication Hearing.

### **Who will be told of the decision and when will they be told?**

Those present at an Adjudication Hearing may be informed of the Commissioner's decision verbally on the day of the Hearing. The Commissioner's full written decision will be posted to the relevant parties usually within six weeks of the Adjudication Hearing.

The relevant parties are:

- the Councillor;

- the Chief Executive of the Council for which the councillor is a member;
- the complainant; and
- the Deputy Commissioner.

### **Is the decision of the Commissioner publicised?**

A notice of the Commissioner's decision will be published in one or more local newspapers which circulate in the area of the relevant council and a copy of the full decision will be posted in the "Hearings and Adjudication Decisions" section of the website.

### **If the Commissioner determines that the Code has been breached, how does she decide what level of sanction to impose?**

The Commissioner's has produced Sanctions Guidelines which are available on her website in the "Publications" section. The Guidelines are not prescriptive: the Commissioner's decision will to a large extent depend on the particular circumstances on each case. The level of sanction will be designed to discourage or prevent any future failures to comply with the Code. The Guidelines also provides examples of aggravating or mitigating factors which the Commissioner may take into account in determining the level of sanction to be applied.

### **How soon does any sanction imposed by the Commissioner come into effect?**

The Commissioner's decision notice will state the date on which any sanction she has imposed will come into effect.

### **What happens to a Councillor who is suspended or disqualified as a result of an Adjudication Hearing?**

If someone is disqualified, they cease being a councillor and their position becomes vacant and will be filled as a casual vacancy (also known as co-option).

If a councillor is suspended they remain a councillor but cannot take part in the business of the council. There is no requirement to replace them in council. However, if they hold positions on committees, councils/political parties may choose to fill the vacancy either temporarily or permanently. A suspended councillor continues to be subject to the Code of Conduct. A councillor's entitlement to receive an allowance when under suspension is a matter for their council under that council's Scheme of Allowances for Councillors.

### **Is there a right of appeal against the Commissioner's decision?**

The Councillor can apply for leave to appeal to the High Court on the grounds set out at section 59(14) of the 2014 Act.. Councillors should take their own legal advice about how to appeal the Commissioner's decision.