



Northern Ireland

Local Government Commissioner for Standards

LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 2014

In the matter of Alderman Derek Hussey, a member of Derry City & Strabane District Council

Acting Local Government Commissioner: Mr Ian Gordon OBE QPM
Mr Michael Wilson, Solicitor and the Legal Assessor

STAGE 1 – FINDINGS OF FACT

1. INTRODUCTION

The Northern Ireland Local Government Commissioner for Standards (the Commissioner), Mrs Marie Anderson, has appointed Mr Ian Gordon as Acting Local Government Commissioner (Acting Commissioner) in relation to this Adjudication Hearing process. The role of the Acting Commissioner in this Hearing is defined by: The Local Government Act (Northern Ireland) 2014 (the Act).

By virtue of section 55(1)(a) of the Act, the Commissioner may investigate a written allegation made by any person that a councillor (or former councillor) has failed, or may have failed, to comply with the Code.

On 26 June 2018 and 25 July 2018, the Commissioner received complaints from two members of the public where they alleged that, by his conduct, Alderman Derek Hussey (the Respondent) a member of Derry City & Strabane District Council, had or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors (the Code).

On 16 September 2015 the Respondent was involved in a road traffic incident when he collided with a stationary vehicle then left the scene without reporting the incident. Later that day he was interviewed by police officers at his home address and, when he failed a breathalyser test, he was arrested. At the police station the Respondent provided an evidential sample of 78 micrograms (μg) of alcohol per 100 millilitres of breath, the legal limit being 35 μg .

At Belfast Magistrates Court, on 10 March 2016, Alderman Hussey pleaded guilty and was convicted of driving with excess alcohol; driving without due care and attention; and failing to report an accident. He was sentenced to pay a monetary fine of £500, an Offender Levy of £15, undertake 100 hours of community service and disqualified from driving for five years; ordered to pay £150 and was disqualified from driving for one year; ordered to pay £150 and disqualified from driving for one year, for the respective convictions.

2. INVESTIGATION

The Deputy Commissioner commenced an investigation pursuant to section 55(1)(a) of the 2014 Act. The investigation report of the Deputy Commissioner dated 1 May 2019 (the Report) addressed whether the Respondent had failed to comply with paragraph 4.2 of the Code, as follows:

Paragraph 4.2

“You must not conduct yourself in a way which could reasonably be regarded as bringing your position as a councillor, or your Council, into disrepute”.

Following his investigation, the Deputy Commissioner submitted the investigation report to the Acting Commissioner in accordance with sections 55 and 56 of the 2014 Act. In particular, in accordance with section 55(5) of the 2014 Act, the Deputy Commissioner found at paragraph 57 of the Investigation Report that there was evidence that the Respondent had failed to comply with paragraph 4.2 of the Code and that the Acting Commissioner should make an adjudication on the matters which were the subject of the investigation. On 9 May 2019, the Acting Commissioner determined to hold an Adjudication Hearing in relation to the Respondent’s conduct in order to determine whether or not he had failed to comply with the Code.

3. DETERMINATION OF ADJUDICATION WITHOUT AN ADJUDICATION HEARING

A preliminary Review meeting was held by the Acting Commissioner on 20 June 2019 where the Director of Investigations (representing the Deputy Commissioner), the Respondent and his legal representative were present. At the Review Meeting the Respondent accepted the content of the Investigation Report and that he had breached Paragraph 4.2 of the Code. In particular he accepted that he had brought his role as a councillor and the Council, into disrepute.

The Acting Commissioner informed both parties of his intention to adjudicate this case using the procedures set out in the *‘Procedures for the Adjudication of Cases referred to the Northern Ireland Public Services Ombudsman in her role as the Local Government Commissioner for Standards’*:

Paragraph 25

The [Acting] Commissioner has the discretion to adjudicate to determine whether there has been a breach without an Adjudication Hearing if she considers that she requires no further evidence and any one of the following circumstances apply:

- a. If no reply is received in response to the notification provided to the Respondent within the specified time or any extension of time allowed by the Commissioner; or*
- b. If the Respondent states that he or she does not intend to attend or wish to be represented at the Adjudication Hearing; or*
- c. The Respondent does not dispute the contents of the investigation report.*

Paragraph 26

If the Acting Commissioner decides not to hold an Adjudication Hearing to determine whether there has been a breach, he will send to the Respondent a list of the facts, together with any other supporting evidence, that he will take into account in reaching his decision. The Respondent will have 15 working days to submit any further written representations before the Acting Commissioner makes his adjudication.

Paragraph 27

In circumstances where the Acting Commissioner has made a determination as to breach without holding an Adjudication Hearing, he will, except in exceptional circumstances, hold an Adjudication Hearing to make a determination as to sanction. The procedures to be followed in regard to an Adjudication Hearing to determine sanction will, after the completion of any necessary preliminaries (such as an explanation of the order of proceedings and any opening remarks the Acting Commissioner wishes to make) be those set out below¹.

The Acting Commissioner said he did not require further evidence and would use the expedited procedure, in line with *paragraph 25(c)* above, to determine whether or not there had been a breach of the Code by the Respondent without a public hearing as to the facts. The Respondent would be provided with a Statement of Facts in accordance with '*paragraph 26*' above and given the opportunity to comment and provide further submissions to the Acting Commissioner for him to consider in advance of him making a decision in the case.

4. LIST OF FACTS

The following facts have been obtained from the report of the Deputy Northern Ireland Local Government Commissioner for Standards dated 1 May 2019 and the Response Form of Alderman Derek Hussey received on 6 June 2019.

Relevant undisputed facts:

- i. Alderman Hussey has served as an Alderman on Strabane District Council from 1989 to 2014 and on Derry City and Strabane District Council from 23 May 2014 to present. Alderman Hussey has served as an Alderman for 30 years.
- ii. Alderman Derek Hussey signed an undertaking on 29 May 2014 that he had read and would observe the Local Government Code of Conduct for Councillors.
- iii. Alderman Derek Hussey is currently a member of the Assurance, Audit and Risk Committee, Environment and Regeneration Committee and Governance and Strategic Planning committees and is the Council's representative on the Association for Public Service Excellence (APSE); Civic Forum; Sports Forum; and Strabane Town Forum.

¹ '1' above at paragraphs 67 to 68

- iv. Alderman Derek Hussey attended training on the Code of Conduct on 9 November 2015.
- v. Alderman Hussey became a member of the Policing Community Safety Partnership (PCSP) for Derry City and Strabane District Council in June 2015.
- vi. At the relevant time, 16 September 2015, Alderman Derek Hussey was a member of Derry City & Strabane District Council.
- vii. At approximately 13.45 hours on 16 September 2015 Alderman Hussey was involved in a road traffic collision when he collided with the rear of a vehicle which was stopped, indicating and waiting make a right turn on the Drumquin Road, Castlederg; he left the scene without reporting the collision to the police or exchanging relevant information with the other driver.
- viii. The driver of the other vehicle was caused injury as a result of this collision.
- ix. At approximately 15:25 hours on 16 September 2015 Alderman Hussey was arrested by police at his home in Castlederg. He failed a breathalyser test and was arrested on suspicion of driving with excess alcohol in breath.
- x. Alderman Hussey was conveyed to Strabane custody suite where he provided an evidential sample of 78 micrograms of alcohol per 100 millilitres of breath (μg), the legal limit being $35\mu\text{g}$. He was charged with driving with excess alcohol in breath.
- xi. Alderman Hussey was previously convicted of drinking with excess alcohol on 16 January 2004 and 31 March 2011.
- xii. On 10 March 2016 Alderman Hussey pleaded guilty and was convicted of driving with excess alcohol; driving without due care and consideration; and failing to report an accident. He was sentenced to pay a monetary fine of £500, an Offender Levy of £15, undertake 100 hours of community service and disqualified from driving for five years; ordered to pay £150 and was disqualified from driving for one year²; and ordered to pay £150 and disqualified from driving for one year³, for the respective convictions.
- xiii. Alderman Hussey was suspended from his political party, the Ulster Unionist Party (UUP) until the monetary penalties and his community service were settled.

² To run concurrently within the 5 year driving disqualification.

³ Ibid

- xiv. Alderman Hussey was elected Deputy Mayor on 4 June 2018.
- xv. The media e.g. the 'Derry Daily' dated 21 June 2018, 'The Irish News' dated 29 June 2018 and the 'Derry Now' dated 27 July 2018, reported Alderman Hussey's conviction.
- xvi. Alderman Hussey stepped down as a member of the Policing Community Safety Partnership (PCSP) on 28 June 2018.

Relevant Disputed Facts:

There were no relevant disputed facts.

STAGE 2 – DETERMINATION

5. FINDINGS OF FACT

The Acting Commissioner relied on the agreed and undisputed facts set out at paragraph 4 (i to xvi):

The Acting Commissioner also considered the following additional facts, drawn from the Deputy Commissioner's Report, to complete the chronology of events:

- The Code was in effect when the conduct complained of occurred.
- On 26 June 2018 and 25 July 2018, the Deputy Commissioner received complaints from two members of the public alleging that Alderman Hussey had, or may have, failed to comply with the Code.
- Alderman Hussey was informed on 23 July 2018 that an investigation into the complaints by the Deputy Commissioner was commencing.
- On 2 April 2019 Alderman Hussey was interviewed by Local Government Ethical Standards Investigating Officers. At the interview he provided character references.

In accordance with paragraph 26 of the Adjudication Procedures, the Acting Commissioner sent Alderman Hussey's legal representative a list of those agreed and additional facts being the facts that he intended to take into account in reaching his decision. No further written representations were received on behalf of Alderman Hussey.

6. DECISION

The Acting Commissioner, having established the facts and considered all of the available evidence before him, found as follows:

- i. The Code applied to the Respondent.
- ii. The Respondent accepted at interview, on 2 April 2019, that he had failed to comply with paragraph 4(2) of the Code in relation to his conduct on 16 September 2015 which states that:

'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'.

7. REASONS FOR THE ACTING COMMISSIONER'S DECISION

The Acting Commissioner found as follows:

- i. The Respondent was convicted on 10 March 2016 at Belfast Magistrates Court of offences committed on 16 September 2015:
 - a. Driving with excess alcohol in his blood - contrary to article 16(1)(a) of the Road Traffic (Northern Ireland) Order 1995.
 - b. Driving without due care and attention - contrary to article 12 of the Road Traffic (Northern Ireland) Order 1981.
 - c. Failing to report an accident - contrary to article 175 of the Road Traffic (Northern Ireland) Order 1995.
- ii. The Respondent's conduct, which resulted in criminal convictions, had brought both his position as Councillor and his Council into disrepute, and the Respondent had accepted that his conduct had infringed the Code.
- iii. In reaching his decision on the failure to comply with the Code, the Acting Commissioner has taken into account the Guidance on the Code⁴ and in particular paragraph 4.5.3 which states:

'As a councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions – in either your public life or your private life – have the potential to adversely impact on your position as a councillor or your Council. Dishonest and deceitful behaviour or conduct that results in a criminal conviction, such as a conviction for fraud or assault, even where such conduct occurs in your private life, could reasonably be regarded as bringing your position as councillor, or your Council, into disrepute'.

- iv. The Acting Commissioner also took into account 4.5.4 of the Guidance which states:

'When considering whether conduct is such that it could reasonably be regarded as bringing your position, or your Council, into disrepute, I will consider:

- *Whether that conduct is likely to diminish the trust and confidence the public places in your position as councillor, or your Council, or is likely to result in damage to the reputation of either; and*
- *Whether a member of the public – who knew all the relevant facts – would reasonably consider that conduct as having brought your position as councillor, or your Council, into disrepute'.*

⁴'Sanctions Guidelines where a Councillor has been found to have failed to comply with a Code of Conduct'

- v. The Acting Commissioner was satisfied that the conduct of the Respondent, which resulted in criminal convictions with attendant media publicity, was such that it was likely to diminish the trust and confidence the public places in him as a councillor and his Council. The Acting Commissioner was referred to media reports in this regard which had been provided by the complainants in this case.
- vi. In his interview with the Deputy Commissioner's staff, the Respondent had accepted that his role as a councillor and the Council was brought into disrepute by his actions.
- vii. The Acting Commissioner noted that, at the Pre-Hearing Review held on 20 June 2019, the Respondent accepted through his Legal representative that he had breached paragraph 4.2 of the Code.
- viii. The Acting Commissioner determined that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent's conduct was such that it brought his position as councillor, and his Council, into disrepute. The Acting Commissioner was satisfied that Alderman Hussey had breached paragraph 4.2 of the Code.

STAGE 3 – ACTION TO BE TAKEN

8. SUBMISSIONS ON SANCTION

The Acting Commissioner considered the submissions by both parties on sanction, the Guidance on Sanctions document, the case law referred to in the Hearing and the character references provided by the Respondent. In summary, the respective submissions were as follows:

Submissions by the Deputy Commissioner:

i. Mitigating Factors:

- a. The Respondent has no history of breaching the Code.
- b. The Respondent co-operated with the investigation in recognising and identifying that the disrepute provisions of the Code may be engaged and thereafter in his acceptance of the draft report findings.
- c. The Respondent had showed regard for the standards regime and took the adjudication proceedings seriously.
- d. The Respondent demonstrated regret and remorse during the investigation over his conduct and acknowledged that his conduct fell short of what is to be expected of an elected councillor.
- e. The Respondent submitted character references, which reflect positively on his character and previous good service as a councillor.
- f. There have been no further complaints about the Respondent's conduct.

ii. Aggravating Factors:

- a. On three separate occasions the Respondent had deliberately driven a motor vehicle knowing that he had consumed a substantial amount of alcohol and, on the second and third occasion, in the knowledge of his previous convictions and the potential consequences he could face in terms of the criminal law.
- b. The facts of this most recent conviction demonstrated that the Respondent's conduct had not only been repeated but had escalated.
- c. The Respondent's conduct had brought the Council into disrepute. His actions as an elected councillor, being convicted of drink driving three times, with the last occasion resulting in an injury to the other driver and subsequent convictions for driving without due care and attention and failing to report a collision was likely to have caused significant public disapproval and concern.
- d. Comments made by the Respondent in the media and his over reliance on the fact that no fatalities had occurred as a result of his actions would question the degree of insight Alderman Hussey genuinely had for the seriousness of drink-driving and the potential risks it poses to others.
- e. When asked to stand down by the Council (via a proposed motion of no confidence) from his role as Chair of the Police & Community Safety Partnership (PCSP) and as Deputy Mayor, the Respondent originally had no intention of relinquishing either role. Whilst he subsequently stood down as Chair of the PCSP, the reason given for this was an increased workload combined with the role of Deputy Mayor. This was further evidence of a lack of insight on the part of the Respondent.

The Deputy Commissioner contended that a sanction of no action, censure and partial suspension would not be appropriate in the circumstances of this matter. He also stated that, notwithstanding the recent local government election result in which the Respondent was successfully re-elected as a councillor and despite the extensive media coverage of his convictions, suspension would not in the circumstances of three convictions for repeated and escalated offending uphold public confidence in the standards regime, reflect the severity of the matter, or convey that the matter should not be repeated.

He submitted that the public interest cannot be addressed by way of the ballot box, and relied on the judgment in *Patrick Heesom v Public Services Ombudsman for Wales*⁵ case in which Mr Justice Higginbottom stated:

'If a councillor is guilty of a breach of the Code of Conduct, his re-election does not and cannot act as an absolution for his misconduct. Popularism is not determinative. In any event, the fact that a councillor is re-elected by his own ward, does not mean that democracy has not been adversely affected by his conduct... In determining an appropriate and proportionate sanction, the case tribunal must consider all relevant facts, including the extent to which the councillor's conduct has had an impact on the rights and interests of other individuals, and the public interest in terms of (e.g.) good administration.'

⁵[2014] EWHC 1504 ADMIN

Referencing the *Heesom* case, the Deputy Commissioner also drew attention to the need to ensure that a sanction was in line with other cases. He noted that in two other drink driving cases previously decided by the Commissioner, namely, Councillor Patrick Brown⁶ and Councillor Thomas Hogg⁷, there were suspensions of 6 months and 5 months respectively, but said that the Respondent's case was significantly aggravated by the fact of it being his third offence, that all offences had been detected as a result of a road traffic collision, and that this third offence resulted in injury to another person and that the Respondent had left the scene of the accident.

Accordingly suspension would not be in line with the decisions on sanction in previous cases nor would it meet the public interest in this case and the Deputy Commissioner submitted that disqualification might be the appropriate outcome on the basis both that the Respondent's actions had brought the Council into disrepute and that he was entirely unfit for public office, as evidenced by the decision of the Respondent not to stand down as Deputy Mayor despite a motion of no confidence being passed in the council chamber on 28 June 2018, and various media reports, including that in the Londonderry Sentinel on 11 July 2018 which quoted the comments of Councillor Duffy from the council meeting on 28 June 2018 stating 'Mr Hussey does not enjoy the confidence of the wider public and is undermining the approach public bodies must take to issues such as drink driving'.

The Deputy Commissioner also referenced the case of Councillor Patrick Clarke which was decided on 21 November 2016. Patrick Clarke had been convicted of criminal offences, one in February 2015 in respect of fraud that occurred in 2010, and one in September 2015 relating to a sexual assault that occurred in December 2014. During the investigation further criminal offences came to light. Sentences for the convictions included a probation order for 10 months, pay compensation of £200 and 7 months' imprisonment suspended for 3 years. He was disqualified for a period of 3 years.

Submissions by the Respondent's Legal Representative

- a Throughout the process of the investigation, the Respondent had never tried to defend or justify his conduct and stringently denied that he had ever underestimated the seriousness of his actions. The Respondent refuted the Deputy Commissioner's argument that his client displayed a lack of insight.
- b The Respondent had fully complied with the sanctions imposed by the Magistrates Court in relation to his criminal conviction, completed all of his community service and paid all fines which were due.
- c The Respondent had also undertaken additional community service following the completion of the terms of his sentence. This voluntary conduct was said to be representative of the nature of the Respondent's good character and the valuable work he had undertaken in his community, which was further demonstrated by the written testimonials he provided.

⁶ Case reference: C00158

⁷ Case reference: C00294_296

- d. The sanction imposed upon the Respondent should be commensurate with the level of disrepute caused by his conduct. It was submitted that this was not a case deserving of disqualification.
- e. The Respondent accepted that his re-election after his convictions did not expunge the seriousness of his actions, but it was submitted that this re-election was nonetheless relevant as a point in mitigation⁸.
- f. In the event the Respondent was disqualified, the ability for his vacancy to be 'casually filled' by way of a co-opted replacement could not adequately replace his thirty years' experience as an elected representative.
- g. The Respondent's conduct could not be compared to the case of Patrick Clarke where there were multiple breaches of the Code of Conduct as opposed to a single breach in this case. Moreover, the suspended prison sentence handed down in Clarke ranked higher in the sentencing pyramid than the sentence imposed on the Respondent.
- h. Referring to the previous decisions of Hogg and Brown, in which the conduct complained of also involved convictions for drink driving offences, it was submitted that the mid-range suspension sanctions handed down in the cases of Hogg and Brown (5 months and 6 months respectively) left ample room to suspend the Respondent for up to a year whilst still taking into account the relevant aggravating factors of the present case.

9. CONSIDERATION OF SANCTION

The Acting Commissioner dealt with sanction in ascending order of severity:

- i. **NO ACTION** - The Acting Commissioner determined that to take no action in this case was not an appropriate response to the failure by the Respondent to comply with the Code because his conduct was a serious matter and not merely an 'inadvertent' failure to comply with the Code.
- ii. **CENSURE** - On the facts of this case, the Respondent's conduct, which had led to his convictions for a criminal offence of driving with excess alcohol and other Road Traffic violations could not be considered as a deliberate but nonetheless minor failure to comply with the Code, and therefore censure was not a suitable sanction.
- iii. **PARTIAL SUSPENSION** - The Sanctions Guidelines indicate that partial suspension may be appropriate where the conduct in question is not sufficiently serious as to warrant disqualification but is of a nature that:
 - a. it is necessary to uphold public confidence in the standards regime required of local democracy;
 - b. there is a need to reflect the severity of the matter; and

⁸ The Respondent was re-elected to Derry City and Strabane District Council following the Local Government elections held on 2 May 2019.

- c. there is a need to make it understood that the conduct should not be repeated.

The Acting Commissioner considered that partial suspension was more likely to be appropriate where the conduct related to a particular activity or Council business from which the councillor could be easily removed. The Acting Commissioner determined that the Respondent's conduct, which led to this breach of the Code, was serious and that a drink driving conviction related to personal conduct but, in this instance, it was not related to any particular area of Council business. The Acting Commissioner concluded that the sanction of partial suspension was not appropriate in this case.

- iv. **SUSPENSION** – The Acting Commissioner took into account the Sanctions Guidelines which state that the sanction of suspension is to be considered where the conduct is not sufficiently serious to warrant disqualification, but the conduct is of a nature that:
 - a. it is necessary to uphold public confidence in the standards regime and/or local democracy;
 - b. there is a need to reflect the severity of the matter; and
 - c. there is a need to make it understood that the conduct should not be repeated.
- v. **DISQUALIFICATION** - Disqualification is the most severe of the options open to the Commissioner. The Sanctions Guidelines at paragraph 19 provides a list of Factors in a case which may lead to this option. The Acting Commissioner considered the following two Factors were relevant to this case:
 - g. *Bringing the council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, she will consider whether the extent of the reputational damage to the council is so serious as to warrant a disqualification.*
 - h. *If the conduct giving rise to a failure to comply with the Code is such as to render the Respondent entirely unfit for public office, then disqualification is likely to be the appropriate sanction.*

10. CONCLUSIONS ON MITIGATING/AGGRAVATING FACTORS

- i. **Mitigating Factors** - the Acting Commissioner accepted:
 - a. The Respondent has a previous record of good service and compliance with the Code.
 - b. There was an apology and a recognition of his failure to follow the Code.
 - c. There has been co-operation in the investigation and the adjudication and his facilitation of an expedited Adjudication Hearing with consequent saving to the public purse.
 - d. There has been no further incidence of non-compliance.

- e. The positive character references submitted on behalf of the Respondent.
 - f. The Respondent had engaged in the investigation process.
- ii. **Aggravating Factors** – the Acting Commissioner concluded:
- a. The serious nature of the conduct which led to a breach of the Code - this was a third conviction for the criminal offence of driving with excess alcohol. It was apparent that the Respondent had not learned from the previous incidents and his conduct was a deliberate intention to drive after consuming alcohol.
 - b. The Respondent had demonstrated a disregard for public safety. The consequences that followed as a result of the Respondent's decision to drive with excess alcohol in his blood included physical harm to the other driver involved in the collision; the endangerment of other road users; leaving the scene of the collision and the failure to report the accident.
 - c. The Acting Commissioner was satisfied the Respondent's actions had brought himself and the Council into disrepute. He was equally satisfied there had been significant reputational damage caused to the Council. This was demonstrated in the media content presented in the Deputy Commissioner's Report and the formal action taken in the Council Chamber seeking to remove the Respondent from his position as Chair of the Policing Community Safety Partnership (PCSP). It was apparent the Respondent had not taken cognisance of public disquiet about him holding this particular role.
 - d. In particular, the Acting Commissioner noted the following two submissions by the Deputy Commissioner:
 - throughout the media coverage Alderman Hussey places significant emphasis on the fact that there was no loss of life /fatalities arising from his drink driving. Alderman Hussey does not refer to the possibility of hurting or injuring someone else. Alderman Hussey is quoted in the Derry Now on 19th June 2018 as stating '*I have every sympathy with these families [families who had suffered loss due to drink drivers], and I was very fortunate that there were no fatalities or injuries as a result of the incidents I was involved in.*'
 - that the bar cannot be so high that someone must die before drink driving offending is to be treated seriously and dealt with as such under the Code of Conduct. Drink driving creates safety risks to the driver, other road users and members of the public.

The Acting Commissioner considered the above factors emphasised that the Respondent had not demonstrated sufficient insight into the seriousness of his actions and the potential consequences for the public and the council. On the evidence provided, the Acting Commissioner could not be satisfied that the conduct might not be repeated.

11. THE DECISION ON SANCTION

The decision of the Acting Commissioner, made under Section 59(3)(c) of Part 9 of the Local Government Act (Northern Ireland) 2014, was to disqualify the Respondent for a period of fifteen months from being, or becoming (whether by election or otherwise), a councillor and the disqualification would have effect from 12noon on 16 July 2019.

12. REASONS FOR THE SANCTION

The Acting Commissioner had considered the objectives, set out in paragraph 3 of the Sanctions Guidelines, and found that the following objectives were relevant to determining sanction in this case:

- a. the public interest in good administration
- b. upholding and improving the standard of conduct expected of councillors;
- c. the fostering of public confidence in the ethical standards regime introduced by the 2014 Act

Any sanction imposed must also be justified in the wider public interest and should be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code or to discourage similar conduct by other councillors.

- i. The Acting Commissioner had considered the seriousness of the case and the risks to the public. This was a third conviction for drink driving and the Acting Commissioner noted Mrs Justice Keegan's words in her written decision in the Appeal by Councillor Patrick Brown⁹: Mrs Justice Keegan said:
 - *"this type of behaviour (drink driving) can have devastating consequences and is frowned upon by our society"*.
 - *"this case should make clear that anyone convicted of a similar offence will face immediate suspension"* and commented that: *"The length of the suspension (six months) is mid-range."*
- ii. The drink driving conduct had been aggravated by a failure, on the part of the Respondent, to report the incident and by the injury to the other driver.
- iii. The Acting Commissioner was not persuaded (see paragraph 10 ii. above) that the Respondent had demonstrated sufficient insight into the seriousness of his actions and its potential consequences for the public and the council. The Acting Commissioner was of the view that the aggravating factors in this case substantially outweighed the mitigating factors.
- iv. Not only has the action brought the Council into disrepute but the disregard for public safety demonstrated by the Respondent and the potentially extremely serious consequences of his personal behaviour meant that the Acting Commissioner was satisfied the Respondent was entirely unfit for public office.

⁹ Brown's (Patrick) Application [2018] NIQB 62

In reaching this conclusion the Acting Commissioner endorsed the submission by the Deputy Commissioner that *“the bar cannot be so high that someone must die before ‘drink driving’ offending is to be treated seriously”*.

13. PREVIOUS CASES

The Acting Commissioner considered the submissions by both parties in relation to the cases of councillors Brown and Hogg. These were both first offences for drink driving and involved no injury to any other person, being incidents where the drivers were stopped by the Police. Both councillors were suspended (6 months and 5 months respectively).

The Acting Commissioner said the Respondent’s case was materially more serious than these two cases. His was a third offence of drink driving, he did not report the collision and an injury was caused to the other driver.

The Acting Commissioner also considered the case of former councillor Clarke, which involved offences of dishonesty and sexual assault. He had exploited his position as a councillor for deliberate personal, financial and political gain. He defrauded local public organisations of public money. He was convicted of a sexual offence. Mr Clarke had received four criminal convictions and had failed to comply with four parts of the Code. Mr Clarke was disqualified for three years from being a councillor.

The Acting Commissioner said the Respondent’s case was less serious than the conduct in Clark, where part of his conviction included a suspended prison sentence.

14. ECONOMIC IMPACT

The Acting Commissioner took into account the economic impact on the Respondent in the loss of Council allowances but said that consideration was outweighed by the importance of the public interest in matters of this type.

The Acting Commissioner had considered the effect of disqualification, as set out in Paragraph 21 of the Sanctions Guidelines, which may avoid the electorate being left without adequate representation. That was a matter, however, for the Respondent’s political party.

15. REFERRAL

There was no self-referral by the Respondent or referral by his Party or his Council following this third conviction for drink driving. As an observation, the Acting Commissioner said councillors, political parties and Councils should be mindful of the need to draw such matters to the notice of the Commissioner. This was not, however, an aggravating factor which the Acting Commissioner had considered in this case.

16. LEAVE TO APPEAL

The Respondent may seek the permission of the High Court to appeal against a decision made by the Acting Commissioner, which must be made within 21 days of the date that the Respondent receives written notice of the Acting Commissioner's decision.

A handwritten signature in blue ink that reads "Ian A Gordon". The signature is written in a cursive style with a prominent initial "I" and a long, sweeping underline.

Ian A Gordon

Acting NI Local Government Commissioner for Standards
11 July 2019