



Northern Ireland

# Local Government Commissioner for Standards

## Local Government Act (Northern Ireland) 2014

### In the matter of Alderman Jim Rodgers OBE (Belfast City Council).

**Decision of the Northern Ireland Local Government Commissioner for Standards following the public Adjudication Hearings held at Progressive House, Wellington Place, Belfast, on 21, 28 November and 5 December 2018.**

*Adjudication Hearing: Mrs Marie Anderson, Northern Ireland Local Government Commissioner for Standards (the Commissioner).*

*The Deputy Commissioner Mr Paul McFadden presented his Investigation Report dated 3 August 2018. The Respondent, Alderman Jim Rodgers was not present at the hearing on 21 November 2018 but was present and represented at the Adjudication Hearings on 28 November and 5 December 2018.*

### **Complaint**

By virtue of section 55(1)(a) of the Local Government Act (NI) 2014 (2014 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 Northern Ireland Local Government Code of Conduct for Councillors (the Code). On 19 January 2017, Councillor Michael Long complained to the Commissioner in respect of alleged failures by Alderman Rodgers to register and declare his interest in Ashfield Girls' High School and Belmont Bowling Club, as required by the Code. Councillor Long was also concerned about Alderman Rodgers failing to act in an appropriate manner when agenda items in which he had an interest were discussed at meetings of the Council. In particular, Councillor Long referred to a number of meetings of the East Belfast Area Working Group (EBAWG) and the Council's Strategic Policy and Resources Group (SP&R) when proposals for funding under the Local Investment

Fund 2 (LIF2) were considered. Councillor Long's complaint was made in the context of his wider concerns about the operation of LIF2 and the Belfast Investment Fund (BIF), which he had initially directed to the Northern Ireland Audit Office (NIAO). In particular he was concerned that the availability of the funds was not advertised and that it was for local councillors to bring forward proposals for funding allocation to specific groups or projects. He was concerned that this procedure places certain groups or bodies linked to councillors in a more favourable position than other potential beneficiaries and about the potential conflicts of interest given the substantial amounts of public money involved. The NIAO referred him to the Commissioner's office.

### **The Investigation**

The Deputy Commissioner commenced an investigation pursuant to section 55(1)(a) of the 2014 Act on 1 March 2017.

The Deputy Commissioner's investigation initially focused on whether Alderman Rodgers had breached paragraphs 5.2, 6.3, 6.4 & 6.9 of the Code. As the investigation progressed the Deputy Commissioner also considered whether Alderman Rodgers may also have breached paragraphs 6.1 and 6.2, as they relate to pecuniary interests.

The relevant paragraphs are outlined below;-

1. *Paragraph 5.2 (i)(bb) of the Code states:*

*Subject to paragraphs 5.4 and 5.6, you must, within 28 days of your election or appointment to office (if that is later) register your personal interests (both financial and otherwise) where they fall within a category mentioned below, in your Council's register by providing written notification to your Chief Executive...*

*i) any –*

*(aa) public authority or body exercising functions of a public nature...*

*.....*

*(ee) private club, society or association operating within your council's district,*

*in which you have membership or hold a position of general control or membership*

2. *Paragraph 5.3 states:*

*You must, within 28 days of becoming aware of any interest that falls within a category mentioned in paragraph 5.2 or any change to an interest already registered, register that interest or change by providing written notification to your Chief Executive.*

3. Paragraph 6.1 states

*Section 28 of the 1972 Act requires you to declare any pecuniary interest, direct or indirect, that you may have in any matter coming before any meeting of your council. Such interest will be recorded in the register kept by your council for this purpose*

4. Paragraph 6.2 states

*You must not speak or vote on a matter in which you have a pecuniary interest. If such a matter is to be discussed by your council, you must withdraw from the meeting whilst that matter is being discussed.*

5. Paragraph 6.3:

*You must declare any significant private or 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 that a decision on the matter might reasonably be deemed to benefit or disadvantage yourself to a greater extent than any other council constituents.*

6. Paragraph 6.4:

*You must declare any significant private or non-pecuniary interest in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or subcommittee 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.'*

7. Paragraph 6.9 states

*‘ It would however be appropriate for you to remain at a council meeting and speak and vote on a matter in which you have declared a significant non- pecuniary interest if your interest arises because you are*

- a member of a public body, or*
- a member or supporter of a charity, voluntary body, or other organisation formed for a public purpose (i.e not for the personal benefit of members)*

*However, except where you have been appointed by your council as a representative on the organisation, you must not vote (although you may speak) on any matter directly affecting the finances or property of the organisation’s management committee or governing body.’*

8. Paragraph 2.7 of the Code states

*‘ You must observe the Code ;*

*(a) Whenever you conduct the business or are present at a meeting of your council*

*....*

At paragraph 35 of the Investigation Report, the Deputy Commissioner clarified that the Principles and Rules of the Code relating to the registration and declaration of interests apply only when the conditions set out in paragraph 2.7 above are met. The Investigation Report also made reference to the applicability of the Code’s Principles of Selflessness, Objectivity and Honesty.

The Investigation Report contained minutes of the following meetings of the EBAWG

2 June 2015

13 August 2015

25 August 2015

3 September 2015

27 October 2015

24 November 2015

7 January 2016

29 January 2016

3 March 2016

21 April 2016

12 May 2016

2 June 2016

4 August 2016

15 September 2016

6 October 2016

The Investigation Report also referred to the minutes of the full Council meeting on 4 July 2016 when Alderman Rodgers failed to declare an interest in Belmont Bowling Club. .

### **Pecuniary or Non – Pecuniary Interest**

The Investigation Report referred to Alderman Rodgers' membership of the Board of Governors of Ashfield Girls' High School, his Honorary Membership of Belmont Bowling Club and other interests. It also set out Alderman Rodgers' initial response to the complaint. Specifically, Alderman Rodgers by letter dated 9 February 2017 stated that he '*utterly denied*' the allegations and that he was '*one of the most diligent Councillors in disclosing to the Chairman*'. Further, by letter dated 14 February 2017 Alderman Rogers enclosed minutes of five working group meetings which he stated demonstrated that he was diligent in declaring an interest. Two of those minutes referred to EBAWG meetings of 15 September and 6 October 2016. The remaining minutes related to meetings not referred to in the complaint from Councillor Long. Alderman Rodgers indicated that he could provide further minutes.

Alderman Rodgers attended for interview with the Deputy Commissioner's staff on 22 January 2018 and at interview described himself as '*most diligent at declaring an interest because I'm on the Council 25 years. I'm one of the longest serving councillors and I know the rules and regulations from A to Z*'. Alderman Rodgers also gave a

detailed account of the decision making processes at the EBAWG and SP&R committees. The Investigation Report references this interview in detail.

The Investigation Report details the Deputy Commissioner's considerations as to whether or not Alderman Rodgers' interests in Ashfield Girls' High School and Belmont Bowling Club were pecuniary or non-pecuniary interests. Pecuniary interests are financial interests. At paragraphs 105 – 108 of the Investigation Report, the Deputy Commissioner concludes that Alderman Rodgers' membership of the Board of Governors of Ashfield Girls' High School is a significant non-pecuniary interest. Alderman Rodgers had contended in response to the investigation that his Honorary Membership of Belmont Bowling Club was not a significant non-pecuniary interest. The Deputy Commissioner noted that neither the Code nor the Commissioner's Guidance differentiates between membership and honorary membership and that Alderman Rodgers' interest in Belmont Bowling Club was a significant non-pecuniary interest.

### **Investigation Findings**

In accordance with section 55(5) of the 2014 Act, the Deputy Commissioner found at paragraphs 91 to 97 of the Investigation Report that Alderman Rodgers' interest in both Ashfield Girls' High School and Belmont Bowling Club were significant non-pecuniary interests and ought to have been registered and declared by him as required by the Code. The Deputy Commissioner found that Alderman Rodgers had failed to register his interest in both organisations at the relevant time in breach of 5.2 and 5.3 of the Code. The Deputy Commissioner also found that the Code applied to Alderman Rodgers' conduct at the 16 meetings outlined above. On seven of those occasions, Alderman Rodgers declared an interest but failed to identify the type of interest being declared.

The Investigation Report stated that, on those seven occasions, Alderman Rodgers ought to have left the room but did not do so, which evidenced a breach of paragraph 6.4 of the Code.

## **Referral for Adjudication**

The Deputy Commissioner referred the case for Adjudication to the Commissioner. The Commissioner having considered the Investigation Report, decided to hold an Adjudication Hearing. Alderman Rodgers was advised of the Commissioner's decision to hold an Adjudication Hearing and a pre-Adjudication meeting on 13<sup>th</sup> August 2018. The pre-Adjudication meeting was arranged for 13<sup>th</sup> September 2018. In his Councillor Response Form dated 22 August 2018, Alderman Rodgers stated that he accepted the Deputy Commissioner's report, in part, and that he did not intend to attend the Adjudication Hearing or to be represented at it.

## **Pre- Adjudication Meeting 13<sup>th</sup> September 2018**

A Pre- Adjudication meeting was held by the Commissioner on 13 September 2018 (the review meeting). Alderman Rodgers was neither in attendance nor represented at that review meeting. Based on advice from her Legal Assessor, the Commissioner determined that, given the administrative nature of the review, it was appropriate to proceed in Alderman Rodgers' absence. At the review meeting, the Commissioner issued a number of directions to both parties for further submissions in advance of the Adjudication Hearing. In particular the Commissioner directed that the Deputy Commissioner address her on the application of the dispensation provided for at paragraph 6.9 of the Code to Alderman Rodgers' interests and that up to date records of those interests be provided. Further she directed that the Deputy Commissioner address her on the role and status of the Area Working Groups in the context of the Council's Committee system. The Commissioner also directed that Alderman Rodgers clarify those parts of the Investigation Report that he accepted and those which he did not. She directed that he provide submissions on the application of the dispensation at 6.9 of the Code and evidence of an updated register of interests.

## **Evidence Presented at the Adjudication Hearing 21 November 2018**

Alderman Rodgers chose not to attend the Adjudication Hearing and was not represented. The Deputy Commissioner was in attendance together with the Director of Investigations and the Investigating Officer. The Hearing was held in public and transcribed. The Commissioner invited the Deputy Commissioner to outline whether

the Hearing should proceed in Alderman Rodgers' absence. Alderman Rodgers had indicated to the Commissioner's Legal Officer that he did not intend to attend and that he was content that the hearing proceed in his absence. Following representations by the Deputy Commissioner, the Commissioner was satisfied that Alderman Rodgers was aware of the date, place and time of the hearing. Based on advice from the Legal Assessor the Commissioner decided in accordance with paragraph 48a of the Adjudication Procedures that it was not unfair to Alderman Rodgers that the Hearing should proceed in his absence.

Alderman Rodgers is an elected member of the Ulster Unionist Party of Belfast City Council. In his Councillor Response Form as part of the Adjudication process Alderman Rodgers had accepted in part only, the Deputy Commissioner's findings in the Investigation Report.

Notwithstanding Alderman Rodgers' partial acceptance of the Investigation Report and his acceptance that he had failed to comply with paragraphs 6.3 and 6.4 of the Code (in some respects), it is for the Commissioner alone to decide whether or not a councillor has failed to comply with the Code.

The evidential test for findings of fact at an Adjudication Hearing is on the 'balance of probabilities'. Although there was no express challenge to the presentation of facts on behalf of the Deputy Commissioner, the Deputy Commissioner must still satisfy the Commissioner on the balance of probabilities on the facts contended for.

### **Stage 1 of the Adjudication Hearing - Findings of Fact**

The Commissioner relied on:

1. The Investigation Report and supporting documentation including a transcript of Alderman Rodgers' interview and witness statements as well as minutes of the relevant Council meetings.
2. Alderman Rodgers' Councillor Response Form received by the Commissioner on 22 August 2018, his supporting submissions and subsequent correspondence.
4. A letter from the Deputy Commissioner dated 27 September 2018 with detailed submissions on the status of Area Working Groups, the issue of the dispensation



under section 6.9 of the Code and also Alderman Rodgers' updated register of interests.

**The Commissioner found the following facts:**

1. Alderman Rodgers is a Councillor of Belfast City Council and was a Councillor of Belfast City Council at all relevant times
2. Alderman Rodgers signed a Declaration of Office on 24th May 2014 and, therefore, the Code applied to him.
3. Alderman Rodgers was an Honorary Member of Belmont Bowling Club at the relevant time. Alderman Rodgers has no voting rights and he is not required to pay an annual fee. Alderman Rodgers' interest in Belmont Bowling Club was required to be registered as it was a private club operating in the Council's district. Paragraph 5.2(i)(ee) of the Code applied to his interest in respect of Belmont Bowling Club.
4. Alderman Rodgers was a member of the Board of Governors of Ashfield Girls' High School at all relevant times. He has since ceased to be a member of the Board of Governors. Alderman Rodgers' interest in the School required to be registered as it is a public authority or body exercising functions of a public nature. Paragraph 5.2(i)(bb) of the Code applied to his interest in respect of the School.
5. At all relevant times Alderman Rodgers did not or had not registered his interest in Belmont Bowling Club or in Ashfield Girls' High School as required by paragraphs 5.2 and 5.3 of the Code. Alderman Rodgers registered his interest in Ashfield Girls' High School in August 2016 and his interest in Belmont Bowling Club in August 2018.
6. The Local Investment Fund (1 and 2) and Belfast Investment Fund are part of the Council's investment fund to generate rates and create jobs. Each fund has a finite amount of money to be allocated to a project following the consideration of a proposal at Area Working Groups.

7. The Area Working Groups (AWGs) were created as a mechanism for identifying and considering the merits of funding proposals or projects. There were five AWGs in Belfast; north, south, east, west and Shankill. Proposals made to AWGs are ultimately ratified by the full Council. AWGs are not committees or sub-committees of the Council and have no delegated authority to make decisions. However, in September 2014 the Council's Audit, Risk & Governance Services issued a report confirming to all AWG members of the applicability of the Code to councillors at AWG meetings. The report referenced the need for all councillors at those meetings to declare all pecuniary and/or non-pecuniary interests. The report also recommended the recording of such declarations by the Council.

8. The Code applied to the conduct of Alderman Rodgers at AWG meetings and at the meeting of the full Council on 4<sup>th</sup> July 2016.

9. In relation to LIF 2 funding Ashfield Girls' High School was seeking funding of £130,000 and Belmont Bowling Club was seeking funding of £200,000

### **Ashfield Girls' High School**

7. Alderman Rodgers declared an interest in respect of his interest in Ashfield Girls' High School at the EBAWG meetings held on 2nd June, 13<sup>th</sup> August, 3rd September and 27th October 2015, and on 4th August 2016. There is no record of his leaving the room having declared the interest in the School.

8. Alderman Rodgers did not declare an interest in respect of his position on the Ashfield Girls' High School Board of Governors at the EBAWG meeting held on 24th November 2015.

### **Belmont Bowling Club**

9 Alderman Rodgers declared an interest in respect of his Honorary Membership of Belmont Bowling Club at the EBAWG meetings held on 7th January, 15th

September and 6th October 2016. There is no record of his leaving the room having declared his interest in the Club.

10. Alderman Rodgers did not declare an interest in Belmont Bowling Club at the EBAWG on 29th January 2016 when it was suggested that no further funding should be allocated until the AWG had finalised its criteria. It was also agreed at that meeting that Property and Projects would start discussions with the club on proposed costs for the project

11. Alderman Rodgers did not declare an interest in respect of his Honorary Membership of Belmont Bowling Club at the EBAWG meeting held on 3rd March 2016 when it was agreed to make that date a cut off point for the acceptance of LIF2 project proposals.

12. Alderman Rodgers did not declare an interest in respect of his Honorary Membership of Belmont Bowling Club at the EBAWG meeting held on 12th May 2016 when he proposed that the Area Working Group could not use the LIF2 funding to purchase property for applicants. At that meeting it was resolved after discussion that officers would report on the viability of the remaining projects, including Belmont Bowling Club.

13. Alderman Rodgers did not declare an interest in respect of his honorary membership of Belmont Bowling Club at the EBAWG meeting on 2nd June 2016 when the Head of Contracts confirmed that the eleven remaining projects were requesting a total amount of funding which exceeded the LIF budget by £218,671. At that meeting Alderman Rodgers seconded a proposal not to allocate LIF2 funding to one of the eleven projects and members agreed to fund four of the projects including Belmont Bowling Club. Alderman Rodgers did not leave the room during that meeting

14. Alderman Rodgers did not declare an interest in respect of his Honorary Membership of Belmont Bowling Club at the EBAWG meeting of 4th August 2016. At

that meeting the Director of Property and Projects reminded members of the four projects which members had agreed to fund at the previous meeting on 2nd June 2016, one of which was Belmont Bowling Club. The members noted correspondence from Ashfield Girls' High School who were seeking financial assistance for an upgrade of facilities and floodlighting for a 2G hockey pitch respectively. There is no record of Alderman Rodgers leaving the room. In relation to matters discussed at that meeting it was proposed at that meeting by Councillor Johnston and seconded by Alderman McGimpsey that the Area Working Group agreed that Ashfield Girls' High School be granted financial assistance. In relation to recorded actions of Alderman Rodgers at that meeting, the minutes state that he declared that he was a member of Ashfield Girls' High School Board of Governors but there is no record of him leaving the room.

### **Minutes of Meetings**

15. At the EBAWG meeting of 3rd September 2015 the minutes record that Alderman Rodgers declared an interest in Ashfield Girls' High School. There is no record of Alderman Rodgers leaving the room during the meeting. The minutes further record that one of the matters discussed at that meeting was the floodlights at Ashfield Girls' High School's 2G pitch (item 4). Following consideration it was unanimously agreed that a notional amount of £130,000 of LIF2 funding would be allocated to the project.

16 At the EBAWG meeting on 27th October 2015, the minutes record that Alderman Rodgers declared his interest in relation to Ashfield Girls' High School. There is no record of Alderman Rodgers leaving the room. The minutes record that one of the matters discussed at that meeting in relation to LIF2 was advice from the Director of Property and Projects that a project sponsor would work with Ashfield Girls' High School to develop a formal project proposal form.

17. At the Working Group Meeting on 24<sup>th</sup> November 2015 there is no record of Alderman Rodgers declaring an interest in Ashfield Girls' High School. There is no record of his leaving the room. The minutes record that one of the matters under discussion at the meeting under LIF2 was the update from the Director of Property

and Projects on the installation of floodlighting at Ashfield Girls' High School's existing 2G pitch. The minutes do not record that there was any discussion among members with regard to this update, and there was no recorded involvement of Alderman Rodgers in the meeting although he was present.

18. At the EBAWG meeting on 3<sup>rd</sup> March 2016, Alderman Rodgers did not declare an interest. There was no record of Alderman Rodgers leaving the room but according to the minutes at item 4 under the heading "prioritisation of remaining LIF2 funding", the EBAWG agreed that a line be drawn under all applications which had been received up until that date, namely 3<sup>rd</sup> March 2016. There is no specific reference to Belmont Bowling Club or Ashfield Girls' High School, there is a reference to LIF2 funding as a whole and to the recommendation that a line be drawn under all applications.

19. At the EBAWG meeting on 4<sup>th</sup> August 2016 Alderman Rodgers declared an interest but it is not recorded in the minutes that he left the room. The matters discussed at that meeting included the LIF progress report. During discussion it was confirmed that the Ashfield Girls' High School proposal had passed through due diligence and that on 12<sup>th</sup> April and that the funding agreement had been issued to the school for signature.

20. At the EBAWG meeting on 7<sup>th</sup> January 2016 Alderman Rodgers declared an interest which is recorded in the minutes. There is no record of Alderman Rodgers leaving the room. The matters under discussion at the meeting included correspondence received from the Belmont Bowling Club who were requesting funding from LIF2 for the upgrade of the facilities at the club. It was proposed by Councillor Johnston, seconded by Alderman McGimpsey and resolved that the officer should engage with the club to start discussions and bring a report back with figures for the proposed works to a future meeting.

21. At the EBAWG on 29<sup>th</sup> January 2016 Alderman Rodgers did not declare an interest in Belmont Bowling Club . There is no record of him leaving the room but at

that meeting, according to the minutes, the matters discussed included: "A member expressed concerns that Area Working Groups should not be purchasing property on behalf of the group and that if LIF2 was used to purchase property that the Council should retain ownership. A number of members suggested that no further funding should be allocated until the Area Working Group had finalised its properties/criteria".

22. At the EBAWG meeting on 3rd March 2016, again in relation to Alderman Rodgers' interest in Belmont Bowling Club, he did not declare an interest . There is no record in the minutes of Alderman Rodgers leaving the room. The matters discussed at that meeting at item 4 'prioritisation of remaining LIF2 funding, it is noted: "The Area Working Group agreed that a line be drawn under all applications which had been received up until that date, namely 3rd March 2016". It was also agreed that Property and Projects would speak with Belmont Bowling Club to start discussions on proposed costs for the suggested upgrade project.

23. At the EBAWG meeting on 12<sup>th</sup> May 2016 Alderman Rodgers was present but he did not declare an interest in relation to Belmont Bowling Club. There is no record of him leaving the room. In relation to the discussions at that meeting it is recorded: "During discussion of the LIF2 applications the Director of Property and Projects advised the members that two projects were assessed to be not viable". The names were redacted from the minutes. It is noted in the minutes that "it was proposed by the High Sheriff Alderman Rodgers"-- "that the East Belfast Area Working Group will not use the Local Investment (LIF) to purchase property for applicants". Eight members voted for the proposal and four against and the motion was carried. After further discussion it was resolved that the officers would bring a report to a future meeting on the viability of the remaining projects for LIF2, namely Belmont Bowling Club and ten others. One college applied for funding, however the application was dismissed since it was submitted after 3rd March 2016 where the group agreed they would not consider new applications. Further, those minutes record that the Director of Property and Projects advised members that two projects were not viable and it was proposed by Councillor Armitage, seconded by Councillor Long that four projects classified as amber be rejected. Alderman Rodgers proposed that the Area

Working Group would not use the local investment fund to purchase property for applicants and eight members voted for the proposal and four against. The motion was carried.

24. At the EBAWG meeting on 2nd June 2016, Alderman Rodgers did not declare an interest. There is no record in the minutes of Alderman Rodgers leaving the room. In relation to the matters discussed at that meeting it is recorded that the Head of Contract informed members that eleven projects had to be considered requesting a total of £1,005,371 out of LIF2 funding exceeding the remaining LIF2 budget of £786,700 by a sum of £218,671. The minutes also record :- "Moved by Alderman McGimpsey, seconded by the High Sheriff of Belfast Alderman Rodgers that EastSide Souk -- that is one of the eleven projects -- "not be allocated funding through the Local Investment Fund on the basis that businesses would be operating for profit within the premises. On a vote by show of hands six members voted for the amendment and two against and it was declared carried". The Head of Contracts clarified to the AWG that the amount requested by the remaining ten projects still exceeded the available budget to be allocated. The minutes record that after a number of suggestions by members, the Area Working Group considered the affordability of each project and, agreed to fund the following projects through the Local Investment Fund (LIF2) including Belmont Bowling Club £200,000. It was recorded that Alderman Rodgers seconded a proposal that a LIF2 applicant should not be allocated funding and on a vote by a show of hands six members voted for the amendment and two against, and it was declared carried.

25. At the EBAWG meeting on 4th August 2016 Alderman Rodgers did not declare an interest in relation to Belmont Bowling Club. There was no record of Alderman Rodgers leaving the room. In relation to the matters discussed at that meeting, according to the minutes there was an update on the LIF2 funding allocation of remaining budget. The Director of Property and Projects reminded the working group that at its meeting on 2nd June the members had agreed to fund four projects, including Belmont Bowling Club (£200,000). The minutes do not record that there was any discussion among members with regard to this update. In relation to Alderman Rodgers' actions at that meeting he was not individually referenced during

the meeting. While not declaring his interest in Belmont Bowling Club, Alderman Rodgers declared an interest in Ashfield Girls' High School.

26. The minutes of the EBAWG meeting of 15th September 2016 record that Alderman Rodgers declared an interest in Belmont Bowling Club. He did not leave the room. The matters under discussion at that meeting included BIF investment. The group considered correspondence from five further projects for BIF funding including Belmont Bowling Club. There is no record of Alderman Rodgers leaving the room or any other recorded action.

27. The minutes of the EBAWG meeting of 6th October 2016 record that Alderman Rodgers declared his interest in Belmont Bowling Club. There is no record of him leaving the room.

28. Alderman Rodgers did not declare his interest in Belmont Bowling Club at the full Council meeting on 4<sup>th</sup> July 2016.

The Commissioner is satisfied that where there is no record of Alderman Rodgers leaving the room at the above meetings, that he did not do so. The Commissioner has arrived at this conclusion given that the Council minutes generally record other instances of councillors leaving the room.

## **12. Stage 2 of the Adjudication Hearing – Determination by the Commissioner**

The Commissioner having established the above facts, proceeded at the Adjudication Hearing to determine whether there had been a breach of the Code.

Having considered all of the available evidence including the oral and written submissions provided both by the Deputy Commissioner and submissions provided by Alderman Rodgers, the Commissioner found as follows:

- (i) The Code applied to Alderman Rodgers' conduct that was the subject of Councillor Long's complaint.



- (ii) Alderman Rodgers' interest in Belmont Bowling Club and Ashfield Girls' High School were significant non-pecuniary interests. Alderman Rodgers failed to register his interest in respect of both Belmont Bowling Club and Ashfield Girls' High School within 28 days of his election to Office in breach of paragraphs 5.2 of the Code.

Alderman Rodgers failed to update his Register of Interests in respect of both bodies within 28 days of becoming aware of the requirement to register, despite the Council's annual reminders in this respect. This is in breach of paragraph 5.3 of the Code.

- (iii) Alderman Rodgers was in breach of paragraphs 6.3 and 6.4 of the Code by failing to declare a significant non-pecuniary interest in Belmont Bowling Club at the following meetings of EBAWG:

29 January 2016

3 March 2016;

12 May 2016;

2 June 2016; and

4 August 2016

- (iv) Alderman Rodgers was in breach of 6.4 of the Code when having declared an interest in Belmont Bowling Club he failed to leave the following meetings of the EBAWG:

7 January 2016; and

15 September 2016.

- (v) Alderman Rodgers was in breach of 6.3 and 6.4 of the Code when he did not declare an interest in Ashfield Girls' High School at the following meetings of EBAWG:

24 November 2015; and

3 March 2016.

(vi) Alderman Rodgers was in breach of paragraphs 6.9 of the Code by, having declared a significant non-pecuniary interest in Ashfield Girls' High School at the following meeting of EBAWG he voted (on a matter that affected the finances and property of that school):

13 August 2015; and

3 September 2015.

(vii) The Deputy Commissioner did not satisfy the Commissioner that Alderman Rodgers was in breach of paragraph 6.9 of the Code relating to his participation at the following meetings of EBAWG:

2 June 2015;

27 October 2015;

4 August 2016

(viii) Alderman Rodgers was in breach of paragraph 6.3 of the Code because he failed to declare his significant non-pecuniary interest in respect Belmont Bowling Club at the full Council meeting on 4<sup>th</sup> July 2018.

### **Stage 3 Submissions on Sanction (Action to be Taken)**

Having found that Alderman Rodgers had breached paragraph 5.2, 5.3, 6.3, 6.4, and 6.9 of the Code, the Commissioner moved to consider submissions on the appropriate sanction (if any) in this case .

In light of his 21<sup>st</sup> November submissions on sanction, the Commissioner decided to adjourn this stage of the Sanctions Hearing and to invite Alderman Rodgers to attend and make representations on the issue of sanction. The Commissioner adjourned the Sanctions Hearing until 28 November 2018 where Alderman Rodgers was represented by Councillor Copeland who sought and was granted a further adjournment to allow Alderman Rodger' legal representative to attend.

The Deputy Commissioner addressed the Commissioner through both written and oral submissions on the issue of sanction. In doing so he referred to the Sanctions Guidelines and considered each sanction available to the Commissioner.

In summary he submitted as follows:

**No Action** – No action would not be a suitable outcome in these proceedings given that that conduct is serious, and that to consider no action would send a dangerous message to others about their responsibilities in relation to conflicts of interest.

**Censure** – In light of the significant amount of funding involved and the seriousness of the breaches of the Code determined by the Commissioner, censure would not be an appropriate sanction and could not adequately cater for the public interest engaged in this case.

**Partial Suspension** – Partial suspension would be an appropriate sanction in this case. This sanction was designed to meet circumstances in which a councillor's conduct was such that it was limited to a particular activity or section of council business from which the councillor could be easily extracted.

**Suspension** – Whilst recognising that suspension may be a matter for the Commissioner to consider, it was submitted that partial suspension would be more appropriate in this case in providing an adequate safeguard against a future failure to comply with the Code whilst leaving Alderman Rodgers able to make an effective contribution to the other work of the council.

**Disqualification** – The conduct in this case was not sufficiently serious as to warrant disqualification.

### **Mitigating factors**

Throughout, Alderman Rodgers co-operated with the investigation and has shown regard for the standards regime.

Alderman Rodgers also enabled matters to be dealt with expediently by providing responses on time and making himself available for interview.

Alderman Rodgers originally accepted in respect of Ashfield Girls' High School that he ought to have declared an interest and left the meeting. Whilst some credit should be

afforded to Alderman Rodgers for this admission he subsequently resiled from this position at the commencement of the Adjudication process.

There is no evidence that Alderman Rodgers benefitted in any way from the monies available under LIF2 to Ashfield Girls' High School. He has since ceased to be a member of the Board of Governors of that school.

There is no evidence that Alderman Rodgers brought himself or the Council into disrepute.

### **Aggravating Factors:**

The breaches of the Code are serious.

The amount of funding that was made available to both Ashfield Girls' High School and Belmont Bowling Club was significant.

The potential consequences of decisions on LIF and BIF are that other proposals which would have benefitted from this funding were unfairly excluded and denied the opportunity to receive funding on the basis of Alderman Rodgers' significant non-pecuniary interest rather than the proposals being decided on the basis of the public interest alone.

Alderman Rodgers' Honorary Membership was acquired prior to Belmont Bowling Club's application for LIF2 and BIF funding. The Honorary Membership is for life. Alderman Rodgers has the potential to obtain some form of benefit e.g. increased enjoyment of his surroundings from the enhanced facilities provided under LIF2 funding when he attends Belmont Bowling Club to watch a game. However there was no suggestion that he had sought to gain in a financial sense.

Conduct of this nature may serve to weaken public confidence in the impartiality, fairness, transparency and integrity in local government and specifically the operation of the LIF and BIF funding schemes.

The Deputy Commissioner having submitted that he was not advocating for particular sanction as this was a matter for the Commissioner to determine, considered that an

appropriate sanction was partial suspension for a short period between one to three months.

### **Reconvened Adjudication Hearing on Sanction 5 December 2018**

At the reconvened Sanctions Hearing on 5 December 2018 the Commissioner invited the Deputy Commissioner to make representations on sanction again.

### **The Respondent's submissions on Sanction**

At the reconvened Stage 3 Hearing to address the issue of Sanction, Counsel for the Respondent Ms Bobbie-Leigh Herdman made the following points in mitigation on her client's behalf:

Alderman Rodgers admitted the breaches and fully accepted all findings arrived at by the Commissioner and accepted that compliance with the provisions of the Code is his personal responsibility.

The "inadvertent" breaches of the Code, for which Alderman Rodgers apologised, were neither intentional nor dishonest.

There was general confusion at the time within Belfast City Council in relation to the registration and declarations of interest, and the Respondent misunderstood the requirements in respect of same as set out in the Code.

Alderman Rodgers' understanding of the status of the EBAWG at the time of the breaches was that it was a non-decision making body.

Given the nature of his Honorary Membership of Belmont Bowling Club, Alderman Rodgers received no pecuniary or non-pecuniary gain as a result of the funding that it was allocated under the Scheme.

Alderman Rodgers has now registered his interests in respect of Ashfield Girls' High School and Belmont Bowling Club.

Alderman Rodgers is a widely respected member of Belfast City Council who has served the public as a councillor for 25 years and has no history of breaching the Code of Conduct.

There was no evidence that Alderman Rodgers' conduct brought his position as a councillor or his Council into disrepute.

Ms Herdman further submitted "character references" from the President of Belmont Bowling Club and the Chair of the Board of Governors of Ashfield Girls' High School in support of Alderman Rodgers.

With the Commissioner's permission, Ms Herdman submitted evidence of recent meetings of the Council at which Alderman Rodgers made declarations of interests. This was intended to demonstrate Alderman Rodgers' ongoing compliance with the Code.

On sanction, Ms Herdman contended that this was a case which justified no action in terms of Alderman Rodgers personally. However, in the event that the Commissioner considered that no action did not apply in this case, she submitted that censure would be the most appropriate sanction because it would serve the purpose of formalising the criticism of the conduct and would lay down a marker that it should not be repeated

### **The Commissioner's Decision on Sanction**

The Commissioner considered the Sanctions Guidelines, the submissions of the Deputy Commissioner, Ms Herdman and previous submissions of Alderman Rodgers. The Commissioner considered what action, if any, should be taken and examined each potential sanction in ascending order of severity.

## **No Action**

The Commissioner determined that to take no action in this case is not an appropriate response to the multiple and persistent failures by Alderman Rodgers to comply with the Code. Alderman Rodgers' conduct was a serious matter and not merely an 'inadvertent' failure to comply with the Code.

## **Censure**

On the facts of this case Alderman Rodgers' conduct could not be considered as a deliberate but nonetheless minor failure to comply with the Code. Therefore censure was not a suitable sanction in this case.

## **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 such that:

- (a) it is necessary to uphold public confidence in the standards required of 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.

The Commissioner accepted the submission of the Deputy Commissioner that partial suspension is more likely to be appropriate where the conduct relates to a particular activity or Council business from which the councillor could be easily removed.

## **Suspension**

The Commissioner has taken 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 such that:

- (a) it is necessary to uphold public confidence in the standards regime and on 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.

### **Disqualification**

Before determining if suspension was the appropriate sanction in this case the Commissioner considered whether Alderman Rodgers' conduct was sufficiently serious to warrant disqualification. Having regard to paragraph 19(g) of the Sanction Guidelines and noting the mitigating and aggravating factors referred to above, the Commissioner determined that, although Alderman Rodgers' actions were serious, having regard to his exemplary public service, the conduct was not so serious as to warrant a disqualification.

### **Purpose of Sanction**

The Commissioner has considered the applicability of the objectives identified in paragraph 3 of the Sanction Guidelines and considered that the objective of upholding and improving the standard of conduct expected of councillors and in fostering the public confidence in local government representatives. The public interest in the ethical standards regime that was introduced by the 2014 Act is relevant to the consideration of sanction in this case. Any sanction imposed must be justified in the wider public interest and should be designed to discourage or prevent Alderman Rodgers from any future failures to comply with the Code and to discourage similar conduct by other councillors.

The Commissioner referred to Appendix A of the Sanction Guidelines, which set out a non-exhaustive list of mitigating and aggravating factors in determining the appropriate sanction. The Commissioner also considered the submissions on this issue received from Ms Herdman, and the Deputy Commissioner's written and oral submissions.

### **The Commissioner's conclusions on Mitigating/Aggravating Factors**

#### **Mitigating Factors:**

Alderman Rodgers had co-operated in part with the investigation.



Alderman Rodgers had a previous record of exemplary public service and compliance with the Code.

There was an apology by Alderman Rodgers and now a clear acknowledgement and recognition of his failures to follow the Code.

There has been no further reported incidence of non-compliance on Alderman Rodgers' part.

There was general confusion about the conflict of interest provisions in the Code.

There were no intentional failures to comply with the Code

There was no dishonesty on Alderman Rodgers part.

**Aggravating Factors:**

The failure to comply with the Code were repeated and persistent.

The breaches of the Code were serious matters

The public money involved in the decision making in respect of both Ashfield Girls' High School and Belmont Bowling Clubs projects was significant

Alderman Rodgers had attempted to abdicate responsibility for his conduct claiming 'confusion' and lack of guidance. Guidance had been provided by the Commissioner (2017) and former Commissioner (2014), the Council's Audit Risk and Governance Services (2014) and the City Solicitor (2016).

As a long standing Councillor Alderman Rodgers would have knowledge of the previous Code of Conduct in place since 2003 with similar conflicts of interest provisions to the 2014 Code.

## Decision on Sanction

Taking all of this into account the Commissioner has concluded that a period of partial suspension from the EBAWG and Strategic Policy and Resources Committee is both necessary and proportionate to reflect the seriousness and persistent nature of the breaches and to maintain public confidence in local democracy. This was the least serious sanction necessary and was not disproportionate to Alderman Rodgers and his constituents.

## Case Law

In the case of *Patrick Heesom v Public Services Ombudsman for Wales and the Welsh Ministers*<sup>1</sup>, in considering the approach to sanction by the Adjudicating Panel for Wales, Mr Justice Higginbottom referred to the need to ensure that a sanction is in line with other similar cases.

In the High Court appeal<sup>2</sup> relating to the Commissioner's decision imposing a sanction of six months suspension in the case of *Councillor Patrick Brown*<sup>3</sup>, Justice Keegan held that the Court should defer to the Commissioner in her role as the specialist tribunal established to adjudicate upon alleged breaches of the Code. Justice Keegan also referenced the statutory and binding nature of the Commissioner's Guidance.

In the case of *Councillor Padraig McShane*<sup>4</sup> the Acting Northern Ireland Local Government Commissioner for Standards found that Councillor McShane had breached the Code of Conduct in two respects, namely: had failed to comply with Council's policies which was a misuse of Council's resources; and had failed to assist in the Commissioner's investigation, and imposed a sanction of three months' suspension. The Councillor sought leave to appeal to the High Court. Burgess J on hearing the leave to appeal application on the issue of sanction in that case, found that the three month suspension was not 'excessive'<sup>5</sup>.

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<sup>1</sup> [2014] EWHC 1504 Admin

<sup>2</sup> [2018] NIQB 62

<sup>3</sup> Case reference: C00158

<sup>4</sup> Case Reference: C00030

<sup>5</sup> High Court Leave Judgement Court reference: BUR10340. On appeal to the Court of Appeal; judgment is awaited

The Commissioner has also considered jurisprudence from other jurisdictions in relation to Councillor's failures to declare an interest.

The Commissioner also gave careful consideration to the decision of the Standards Commission for Scotland in the case of Councillor Thomas Rainey.<sup>6</sup> In that case the Panel found that Councillor Rainey despite having a non-pecuniary interest in a local Church, failed to declare this interest or withdraw from a Planning Committee meeting in which an application for the upgrading of its car park facilities was considered. The Commissioner considers that Councillor Rainey is to be distinguished from the facts of this case for the reasons outlined below:

- (i) Following an enquiry during the course of the meeting, Councillor Rainey had openly taken steps to seek advice from a Council Officer at the Planning Committee in relation to his interest. In that case however it transpired the advice was based on incomplete information and was therefore inaccurate.
- (ii) There was no other breaches of the Code as there was in Alderman Rodgers' case.

In the case of Councillor Maskill<sup>7</sup> the Adjudication Panel for Wales imposed a sanction of 18 months suspension upon the Councillor for failure to declare an interest.

In the case of Councillor Haulwen Lewis<sup>8</sup> the Adjudication Panel for Wales imposed a sanction of three months suspension upon the Councillor for failure to declare a personal and prejudicial interest in relation to a planning application.

In the case of Councillor Matthew Pollard,<sup>9</sup> the First Tier refused an appeal by the Councillor of the decision the North West Leicestershire District Council Standards Committee. The Tribunal upheld the finding that he was in breach of the Code of Conduct and in particular had misused his position, failed to leave the room when his

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<sup>6</sup> Standards Commission for Scotland case reference: 161128

<sup>7</sup> Adjudication Panel for Wales Tribunal Reference Numbers: APW/002/2009-010/CT & APW/012/2009-010/CT

<sup>8</sup> Adjudication Panel for Wales Tribunal Reference Number: APW/002/2014-015/CT

<sup>9</sup> First-Tier Tribunal General Regulatory Chamber Case Number: LGS/2012/0578

prejudicial interest was engaged and brought his office into disrepute. Given the nature of the breaches, the Tribunal held that it was entirely justified that Councillor Pollard's original sanction of suspension be increased from three months (imposed by the Standards Committee) to six months.

Taking all of this into account, the Commissioner considers a partial suspension for a period of three months from the EBAWG and SP&R committees is both appropriate and proportionate in this case. The suspension will take effect on 24 December 2018.

### **Leave to Appeal**

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

# Learning Points

Alderman Rodgers had urged the Commissioner at the Hearing to provide guidance on the conflicts of interest provisions in the Code. In light of this, the Commissioner would like to take this opportunity to highlight a number of learning points for councillors in general to consider in relation to the application of the Code:

## 1. Councillor's Personal Responsibility

The issue of registration and declaration of interests are fundamental requirements of the Code and it is a councillor's personal responsibility to comply with the Code, regardless of any advice received.

On the issue of personal responsibility the Commissioner had regard to the comments of the Welsh Ombudsman in the case of Councillor Mary Jones<sup>10</sup> as follows:

*"It is a Member's personal responsibility to decide whether they have a personal interest such that they should disclose it. It follows that the decision whether or not to withdraw is also a personal responsibility of the Member and cannot be delegated to a legal advisor."*

## 2. The Status of the Principles

The Principles in the Code are based on the seven Principles of Public Life and five other principles applicable in Northern Ireland.

The Commissioner is mindful of the provisions of section 53 (2) of the 2014 Act which states that the Principles 'govern' the conduct of councillors. The Commissioner reminds councillors of paragraph 3. 4 of her Guidance which states

*'The Principles and the Rules ...are integral and complimentary elements of the Code; you must observe both.....Similarly the close association between the Principles and the Rules means that if you if you follow the Principles as the basis for your conduct, you are less likely to behave in a way that is in breach of the Rules.'*

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<sup>10</sup> Adjudication Panel for Wales Tribunal Reference Number APW/003/2009-010/CT

### **3.Co-operation with the Investigation**

A failure to co-operate with the Commissioner's investigation is a breach of paragraph 4.6 of the Code. It is important that councillors co-operate with the investigation. The Commissioner has power to certify to the High Court any obstruction of an investigation as contempt pursuant to paragraph 5 of schedule 7 of the Public Services Ombudsman Act (NI) 2016.

### **4.Conflicts of Interest**

The Commissioner reminds councillors of the purpose of sections 5 and 6 of the Code as they relate to conflicts of interest (whether financial or otherwise). The requirements of the Code in relation to the registration, disclosure and declaration of interests are of significant public interest. They are intended to give members of the public confidence that decisions are taken in their best interests, not in the interests of councillors or their family, friends or personal associates.

This case related to the application of the rules at paragraphs 6.3 and 6.4 of the Code in relation to significant non-pecuniary interests. An interest is significant if it falls within the category of interests outlined at paragraph 5.2 of the Code or alternatively if a councillor anticipates that a decision on a matter that comes before a Council meeting is such that it might reasonably be considered by a member of the public to benefit or disadvantage that councillor to a greater extent than other council constituents.

The rules are clear that a councillor must declare that interest and leave the room. A councillor may remain and speak and vote on a matter only if a dispensation under paragraphs 6.6 or 6.9 of the Code applies. Paragraph 6.6 of the Code permits councillors to remain in a council meeting when a matter in which the councillor has a significant private or personal non-pecuniary interest is to be debated. Before doing so a councillor must consider whether the interest is so significant that it would be wrong to remain. Councils may have specific guidance on this issue and subject to this, a councillor may speak and vote on such a matter only if:

- *at least half of the council or committee would be required to withdraw due to their personal interests in the matter or*
- *the councillors withdrawal together with that of other councillors would leave the council or committee without a quorum*

In relation to the dispensation at paragraph 6.9 of the Code, if a councillor's interest arises because they are a member of a public body or a member or a supporter of a charity, voluntary body or other organisation formed for a public purpose, the councillor may remain and speak but not vote. Only those councillors who have been appointed to such a body by their council may vote in reliance on the 6.9 dispensation.

When declaring an interest at any meeting of the Council, councillors should also declare the nature of that interest. When seeking to rely on a dispensation under either paragraphs 6.6 or 6.9 of the Code, councillors should expressly declare this.

## **5. Recommendations for Councils**

Pursuant to section 61 of the 2014 Act, the Commissioner recommends that all Councils clearly record/minute declarations of interest made by councillors at all meetings of the Council. The minutes must also record whether a councillor remained or stayed in the room. The Commissioner also recommends that the nature of the interest declared by the Councillor and any declared dispensation be recorded/ minuted.

Marie Anderson

NI Local Government Commissioner for Standards

21 December 2018