



Northern Ireland

**Local Government**  
**Commissioner for Standards**

## **Local Government Act (Northern Ireland) 2014**

### **In the Matter of Councillor Patrick Clarke (Newry, Mourne and Down District Council)**

**Decision of the Acting Northern Ireland Local Government Commissioner for Standards following the Adjudication Hearing held in Downshire Civic Centre, Council Chambers, Downpatrick, County Down on 29 September 2016 and 20 October 2016.**

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

The Northern Ireland Local Government Commissioner for Standards, Mrs Marie Anderson has appointed Mr Ian Gordon as Acting Local Government Commissioner (the Acting Commissioner) in relation to the Adjudication Hearing process. Mrs Anderson excluded herself from the Adjudication Hearing process as, prior to her appointment, she was the Deputy Ombudsman for Northern Ireland and had responsibility for the investigation into the complaint made against the Respondent.

The Deputy Commissioner was represented by Mr Peter Coll QC. The Respondent, who was not present at the Hearing, was represented by Mr Barry McKenna BL instructed by King & Boyd Solicitors.

### **COMPLAINT**

A complaint by Mr Stewart Dickson MLA (Reference C00035) was made to the Commissioner which alleged that an elected member of Newry, Mourne and Down District Council, Councillor Patrick Clarke (the Respondent), had or may have failed to comply with the Code. The allegation was investigated by the then Deputy Commissioner for the Local Government Ethical Standards' (LGES) Directorate of the Northern Ireland Ombudsman's Office.

The Complaint alleged that the Respondent had been convicted of criminal offences, one in February 2015, in respect of a fraud that occurred in 2010, and one in September 2015, relating to a sexual assault that occurred in December 2014. In so doing it was alleged that the Respondent had abused the trust placed in him by the community and brought his position as a councillor and his council into disrepute.

The offence of fraud committed in 2010 took place before the introduction of the Code of Conduct in May 2014. During the investigation further criminal offences committed by the Respondent came to light, these were: an offence of fraud, committed in September 2014 and two offences of criminal damage and possession of an offensive weapon (a hammer) with intent to commit burglary. The last two offences were part of one incident which occurred in September 2015.

In this case, the investigation of Mr Dickson's complaint involving the Respondent's conviction for sexual assault was conducted under Section 55(1)(a) of the 2014 Act. The investigation of the offences committed in September 2014 and September 2015 was conducted under Section 55(1)(b).

The relevant parts of the Code in relation to whether the Respondent had failed to comply with the Code are:

**Allegation 1:**

- Paragraph 4.1a of the Code: Councillors hold public office under the law and must act lawfully
- The Public Duty Principle: You have a duty to uphold the law and to act on all occasions in accordance with the public trust placed in you....
- 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;
  - b. Whenever you act, claim to act or give the impression you are acting in the role of a councillor; and
  - c. Whenever you act, claim to act or give the impression you are acting as a representative of your council

**Allegation 2**

- Paragraph 4.2 of the Code: 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 an investigation, Ms Jacqueline O'Brien the Director of Investigations (Local Government Ethical Standards), submitted a report dated 19 July 2016 to the Acting Commissioner in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014. On 29 July 2016 the Acting Commissioner determined to hold an Adjudication Hearing into the Complaint.

**THE ADJUDICATION HEARING**

Prior to the start of the Adjudication Hearing on 29 September 2016, the Acting Commissioner agreed to a short delay to allow the legal representatives of both parties to confer.

## **Evidence Presented at the Adjudication Hearing**

The Deputy Commissioner's representative, Mr Coll, described what had occurred, in relation to the alleged breaches of the Code, during the period immediately prior to the start of the Adjudication Hearing. He outlined an agreed position in respect of both the Deputy Commissioner and the Respondent as to the nature of those breaches and where the Code had been breached. In particular, the Respondent had now accepted that he had failed to comply with paragraph 4.1(a) of the Code and that at the relevant time, he had given the impression that he was acting as a councillor (as referred to in paragraph 2.7 of the Code).

Further, the Respondent also now accepted that he had failed to comply with paragraph 4.2 of the Code in that he had conducted himself in a way which could reasonably be regarded as bringing his position as a councillor, or his council, into disrepute as shown in the certificates of conviction for four criminal offences:

1. On 14 September 2015 the Respondent had pleaded guilty to an offence contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008 and on 15 October 2015 he was sentenced to a probation order for 10 months and ordered to pay compensation of £200.00.
2. On 12 November 2015 – the Respondent had pleaded guilty to an offence contrary to Section 4 of the Fraud Act 2006 and on 24 March 2016 he was sentenced to 7 months' imprisonment suspended for 3 years.
3. On 12 November 2015 the Respondent had pleaded guilty to an offence contrary to Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977 on 24 March 2016 he was sentenced to 7 months' imprisonment suspended for 3 years.
4. On 12 November 2015 the Respondent had pleaded guilty to an offence contrary to Section 93 of the Justice Act (Northern Ireland) 2011 on 24 March 2016 he was sentenced to 7 months' imprisonment suspended for 3 years.

In the absence of the Respondent, his legal representative Mr McKenna, confirmed this was an agreed position with his client.

## **DECISION**

The Acting Commissioner considered all of the evidence including the submissions given orally at the Adjudication Hearing and found as follows:

1. The Councillor's Code of Conduct applied to the Respondent.
2. The Acting Commissioner accepted the Respondent's admission that he had failed to comply with the Code in relation to the following parts of the Code:
  - Paragraph 4.1(a) of the Code: The Respondent holds public office under the law and he must act lawfully.
  - The Public Duty Principle: he had a duty to uphold the law and to act on all occasions in accordance with the public trust placed in him.
  - Paragraph 2.7 of the Code: he had to observe the Code:
    - b. When giving the impression he was acting in the role of a councillor; and

- Paragraph 4.2 of the Code: he conducted himself in a way which could reasonably be regarded as bringing his position as a councillor, or his council, into disrepute.

## **REASON FOR DECISION**

### **FINDINGS OF FACT:**

There was an unqualified admission by the Respondent to the fact of the four convictions.

1. On 14 September 2015 the Respondent had pleaded guilty to an offence contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008 and on 15 October 2015 he was sentenced to a probation order for 10 months and ordered to pay compensation of £200.00.
2. On 12 November 2015 the Respondent had pleaded guilty to an offence contrary to Section 4 of the Fraud Act 2006 and on 24 March 2016 he was sentenced to 7 months' imprisonment suspended for 3 years.
3. On 12 November 2015 the Respondent had pleaded guilty to an offence contrary to Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977 and on 24 March 2016 he was sentenced to 7 months' imprisonment suspended for 3 years.
4. On 12 November 2015 the Respondent had pleaded guilty to an offence contrary to Section 93 of the Justice Act (Northern Ireland) 2011 and on 24 March 2016 he was sentenced to 7 months' imprisonment suspended for 3 years.

The evidence put forward by the Deputy Commissioner and the acceptance by the Respondent, that he had failed to comply with the Code confirmed, on the balance of probabilities, that the identified breaches of the Code had occurred.

Following submissions in private by the Deputy Commissioner's representative Mr Coll and the Respondent's representative Mr McKenna, concerning Stage 3 of the Adjudication Procedure (sanction), the Acting Commissioner adjourned the Adjudication Hearing to the 20 October 2016.

## **THE RECONVENED HEARING ON 20 OCTOBER 2016**

The Respondent did not attend the reconvened Adjudication Hearing and had not instructed his legal representative, Mr McKenna, to represent him in his absence. In a letter dated 14 October 2016, to the Local Government Commissioner, the Respondent had intimated that he would not be present at the Sanctions' hearing nor would he be represented.

The Acting Commissioner invited submissions from the Deputy Commissioner's representative, on the current situation concerning the Respondent. Mr Coll described a situation where in the letter of 14 October 2016 the Respondent appeared to have resigned his position as a councillor. However, subsequent enquiry with the Council's Chief Executive confirmed that the Respondent had not

resigned. Mr Coll noted that the letter also disclosed that the Respondent would be neither present nor legally represented at the reconvened Hearing and that he anticipated the Adjudication Hearing would proceed in his absence. There had been no request for a further adjournment. Mr Coll stated he had received an email from the Respondent's legal representative, Mr McKenna, that neither he nor the instructing solicitor would be attending the Adjudication Hearing on 20 October 2016 and Mr McKenna felt that it was likely the Adjudication Hearing would proceed in the absence of the Respondent.

Mr Coll stated on behalf of the Deputy Commissioner that there was no legitimate reason for the Adjudication Hearing to be adjourned and that it should proceed.

The Acting Commissioner adjourned the Adjudication Hearing for a short time to consider whether or not to proceed in the absence of the Respondent and his legal adviser.

## **DECISION**

The Acting Commissioner considered what had been said and was aware that it was important for him to exercise the utmost care and caution in deciding whether or not to proceed in the absence of the Respondent. He noted that Adjudication Hearing was adjourned on 29 September 2016 to facilitate the Respondent and, that whether or not the Respondent was still a Councillor, was immaterial to his decision whether or not to continue with the Adjudication Hearing.

The Respondent's letter to the Local Government Commissioner dated 14th of October 2016 left the Acting Commissioner in no doubt that he was aware of the adjourned Adjudication Hearing and would like it to proceed in his absence. The letter clearly indicated that he would not be legally represented. The Respondent had been legally represented at the previous Adjudication Hearing, he had been present in the building although not in the hearing room and there was no reason to believe that he was not made fully aware of the circumstances of this adjourned Adjudication Hearing and had notice it was to take place. The Respondent had not sought a further adjournment, and the Acting Commissioner had not received any other information from the Respondent of any other matters which might prevent the adjourned Adjudication Hearing going ahead. Furthermore, as the Respondent's letter actually addressed mitigation, and demonstrated an expectation that the matter would go ahead in his absence, a further adjournment would be unlikely to have the result of the Respondent appearing at a later date.

An expeditious conclusion to this case was in both the Respondent's interests and the public interest. Therefore, on balance, the Acting Commissioner concluded that any possible prejudice to the Respondent, who had of his own volition decided not to attend, was outweighed by the public interest in this case proceeding to consider sanction.

## **EVIDENCE IN RELATION TO SANCTION**

The Deputy Commissioner's representative informed the Adjudication Hearing that there was nothing known in relation to any previous breaches of the Code by the Respondent.

Mr Coll stated he would refer to 'Appendix A' to the Sanctions Guidelines headed: "Factors that the Commissioner may take into account when determining the appropriate sanction".

Mr Coll then drew attention to other factors pursuant to paragraph 67 of the Adjudication Procedure document concerning aggravating and/or mitigating factors that should be taken into account.,

In mitigation Mr Coll referred to:.,

- The two letters from the Respondent's doctor which had been considered in the private session at the Adjudication Hearing on 29 September 2016, together with the reference to medical issues in the letter from the Respondent to the Local Government Commissioner for standards dated 14 October 2016.
- The timeline between the Respondent signing the undertaking to abide by the Code on 3 June 2014 and then lodging the cheque from the NI Housing Executive (allegation concerning paragraph 2.7 of the Code) in September 2014.
- Whilst the Respondent finally accepted that he had failed to comply with the Code, he had not done so until the day of the Adjudication Hearing on 29 September 2016.
- The Respondent had cooperated during the investigation and, on balance, he had cooperated in the Adjudication Hearing

On aggravating factors Mr Coll referred to the following:

- There was deliberate personal or political gain for the Respondent or others at public expense by exploiting his position as a councillor. He defrauded the NI Housing Executive and Dundrum Village Association of £750, which was public money.
- There were repeated failures to comply with the Code through three separate incidents of criminality which formed the basis of the finding of the breaches of the Code. These events were spread out over the course of a year after signing up to the Code and indicated a refusal or an inability or an ignorance of the need to abide by the Code. There was a pattern of behaviour of repeatedly failing to comply with the Code.
- That the Respondent continued to deny any interpretation that he was acting as a councillor when the fraud offence occurred with the NI Housing Executive and Dundrum Village Association. This fell into the Guidance aspect of: "seeking unfairly to blame other people" where one reading of the Respondent's response to the allegation suggested that it was partly the NI Housing Executive's fault in sending the cheque to him in the first place and that it was made out to him.

- The Respondent had accepted his actions brought the Council into disrepute.
- Whilst not a breach of the Code, as it occurred before the Code came into effect, the Respondent was convicted in March 2015 of defrauding the Drumaroad Community Regeneration Ltd in what seemed to be a similar incident to that with Dundrum Village Association.

Mr Coll brought to the notice of the Acting Commissioner to paragraph 19 of the Sanctions Guidance document, which, under the heading: "Disqualification", sets out a series of factors which the Acting Commissioner might wish to consider when considering sanction. In the context of the present matter, Mr Coll noted the provisions of sub-paragraphs a, d, g and h of paragraph 19.

## **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 three years for being, or becoming (whether by election or otherwise), a councillor, and the disqualification was to have immediate effect from the 20 October 2016.

## **REASONS FOR SANCTION**

The Acting Commissioner referred to the Adjudication Procedures Document – Guidance on Sanction and considered all of the sanctions set out therein.

1. In a letter dated 14 October 2016 to the Local Government Commissioner the Respondent identified personal circumstances which had contributed to his behaviour. These matters were carefully considered by the Acting Commissioner in coming to his decision. In addition, the Acting Commissioner considered the matters stated by Mr Coll in both mitigation and aggravation factors.
2. The Respondent had breached the Councillors' Code of Conduct and
  - a. In reaching the decision on sanction the Acting Commissioner had considered the Respondent's response to the Deputy Commissioner's Report on the allegations, in particular addressing the requirements of Paragraph 2.7 of the Code: that he had to observe the Code while giving the impression he was acting in the role of a councillor; and
  - b. under Paragraph 4.2 of the Code he had conducted himself in a way which could reasonably be regarded as bringing his position as a councillor, or his council, into disrepute.

The Respondent had denied that he had acted or given the impression that he was acting as a councillor. At the Adjudication Hearing he changed his position and accepted that he had given the impression he had acted as a councillor. The four criminal offences he had been convicted of were all directly and inextricably linked to his Council area and its community.

3. The allegations against the Respondent were serious; the relevant criminal offences were committed over a period of time beginning some three months following him signing the declaration that he would observe the Code of Conduct for Councillors. The conduct displayed by the Respondent demonstrated a disregard for the Code to the extent that censure would not be an appropriate sanction.
4. For the reasons set out at paragraph 3 above, it was considered that partial suspension would not be appropriate given the nature of the conduct admitted by the Respondent.
5. A significant element of the Respondent's conduct involved bringing his office as a councillor and that of his council into disrepute. The consequences of his actions demonstrated a significant disregard for the Code. They occurred over a period of time during which he did not appear to have shown any insight into those consequences. For that reason, it was not considered that suspension would be an appropriate sanction.
6. The Respondent sought personal gain in his dealings with the cheque for £750 from the NI Housing Executive that was issued to him. He made use of that money and even delayed repayment until legal action had been taken against him; this was not a mistake on his part. The matter had an impact on his community and diminished the standing of a councillor.
7. There had been a repeated failure by the Respondent to conform to the Code which was in place to meet the high standards of behaviour expected from elected Councillors. The extent of the conduct displayed by the Respondent fundamentally breached the Code and such poor conduct undermined the critical trust between the public and the people they elected. This relationship of trust was essential if public confidence in local government and the democratic process was to be maintained.
8. For all of the reasons set out above, it follows that given the serious nature of the misconduct and the lack of reflection or insight on the part of the Respondent throughout the relevant time, it was such as to render him unfit for public office and disqualification was the appropriate sanction to impose.
9. Although the next Council elections will be in May 2019, for the reasons outlined it was not considered that the period of disqualification would have a disproportionate effect on the Respondent as any lesser period would not meet the public interest. Likewise, although the Respondent would lose his entitlement to allowances there was an overriding public interest in this case in maintaining public confidence in local government.



## **RIGHT OF APPEAL**

The Respondent may appeal to the High Court against this decision in accordance with the provisions of Section 59(14) of the Local Government Act (Northern Ireland) 2014

**Date:** 21 November 2016

A handwritten signature in blue ink, appearing to read 'Ian A. Gordon', with a stylized flourish at the end.

**Ian A. Gordon OBE, QPM**