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

**In the Matter of Councillor Sean McGlinchey**

**(Causeway Coast and Glens Borough Council)**

**Decision of the Acting Northern Ireland Local Government Commissioner for Standards following the Adjudication Hearing held at the offices of Causeway Coast and Glens Borough Council, Cloonavin, 66 Portstewart Road, Coleraine on 5 June 2017**

**Adjudication Hearing:** Mr Ian Gordon, OBE, QPM, Acting Local Government Commissioner.

Mr Michael Wilson, Solicitor, Legal Assessor attending.

The Northern Ireland Local Government Commissioner for Standards (‘the Commissioner’), Mrs Marie Anderson, has appointed[[1]](#footnote-1) Mr Ian Gordon as Acting Northern Ireland Local Government Commissioner for Standards (‘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, at that time, had responsibility for the investigation into the complaint made against the Councillor McGlinchey (‘the Respondent’).

The Deputy Northern Ireland Local Government Commissioner for Standards (‘the Deputy Commissioner’), Mr Paul McFadden, was represented by Mr Peter Coll QC. The Respondent was represented by Mr Ruairi Muldoon.

**COMPLAINT**

A complaint by the Chief Executive, Mr David Jackson, on behalf of Causeway Coast and Glens Borough Council (‘the Council’) (case reference C00055) was made to the Commissioner which alleged that an elected member of the Council, the Respondent, had or may have failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors (‘the Code’)[[2]](#footnote-2). The allegation was investigated by the then Deputy Commissioner and the staff of the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman’s Office.

The complaint alleged:

‘*At the monthly meeting of the Council on 22 September 2015 Councillor McGlinchey raised an issue with the Director of Environmental Services concerning the lack of financial support for a community event in Dungiven. The Respondent was critical of the Director as he felt he had been given no help nor assistance from Council Officials. The matter raised was not directly linked to the committee report being considered under the agenda item. Alderman Cole proposed that the councillor was out of order and that the incident should be reported to the Ombudsman; this was seconded by Alderman John Finlay.’*

An investigation by the Deputy Commissioner addressed whether the Respondent had failed to comply with the following parts of the Code:

1. Paragraph 4.1(c):

‘Councillors hold public office under the law and must act: in accordance with the Standing Orders of your council.’

1. Paragraph 4.13(a) of the Code:

‘You must show respect and consideration for others’; and the Respect Principle: ‘It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public’s regard for and confidence in councillors and councils. You should therefore show respect and consideration for others at all times.’

1. Paragraph 4.14 of the Code:

‘You must work responsibly and with respect, with others and with employees of councils. The ‘Protocol for Relations between Councillors and Employees in Northern Ireland District Councils’ which is included as Appendix 3 in the Code of Conduct for Local Government Employees, is available on the Local Government Staff Commission website.’[[3]](#footnote-3)

Following his investigation, the Deputy Commissioner submitted a report dated 21 March 2017 to the Acting Commissioner in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014 (‘the 2014 Act’). (Relevant extracts of the Deputy Commissioner’s report are provided at Annex A). At paragraph 65 of his report the Deputy Commissioner concluded that there was sufficient evidence that the Respondent had failed to comply with the three provisions of the Code noted above. On 24 March 2017, the Acting Commissioner determined to hold an Adjudication Hearing into the Complaint and on 27 March 2017, a revised report with additional information was provided by the Deputy Commissioner to the Acting Commissioner.

**EVIDENCE PRESENTED AT THE ADJUDICATION HEARING**

The Respondent is an elected member of the Council. He signed the declaration of acceptance of office dated 11 June 2014. The 2014 Act provides that the Code will apply to all Councillors. In signing the declaration, the Respondent undertook to observe the Code.

At the outset of the Hearing the Respondent accepted the findings of fact shown at paragraph 47 of the Deputy Commissioner’s Investigation Report. The Acting Commissioner noted that the Respondent had accepted there had been a failure to comply with the Code but even if he had not done so the Acting Commissioner would have had no hesitation in deciding from the facts not in dispute, shown at paragraph 47of the Report, that there had been a failure to comply with the Code.

On that basis, the Acting Commissioner conflated Stage 1 of the Adjudication Hearing[[4]](#footnote-4): Findings of Fact in the matter and Stage 2 of the Adjudication Hearing: Decision whether there has been a failure to comply with the Code.

The evidential test for consideration of findings of fact is on the ‘Balance of Probabilities’. Notwithstanding acceptance of the Deputy Commissioner’s conclusion at paragraph 65 of his report, by the Respondent, on his comments made at the meeting of the Council on 22 September 2015, the Deputy Commissioner must still satisfy the Acting Commissioner of the facts under contention.

**FINDINGS OF FACT**

The Acting Commissioner found the following facts:

1. The Respondent is a member of the Council
2. He signed his Declaration of Office dated 11 June 2014
3. The Code applied to the Respondent
4. Paragraph 4.1(c) of the Code:

‘Councillors hold public office under the law and must act: in accordance with the Standing Orders of your council.’

* Standing Orders did not allow for matters to be raised in the manner the Respondent chose to raise his concerns about the Director of Environmental Services.
* This was not a minor or inadvertent contravention of Standing Orders, nor was the Respondent responding to events that had only just occurred.
* The effect of raising this matter without proper notice was that a Council Official was subjected to public criticism without being afforded an opportunity to respond or to defend his reputation.
* There was not a lengthy discussion of this matter in the Chamber, but the Respondent persisted in making comments before the Mayor was able to stop him.
1. The Acting Commissioner jointly considered Code Paragraph 4.13(a): ‘You must show respect and consideration for others’ and Code Paragraph 4.14: ‘You must work responsibly and with respect, with others and with employees of councils.’:

* The Respondent did not dispute that he had made the remarks: the Director of Environmental Services had provided no help or assistance, that he had ignored the request for assistance, that he had acted in ‘*a disgraceful manner*’, that his attitude was unacceptable and that the Respondent would not tolerate such conduct.
* The remarks were made in the presence of the press
* The remarks had amounted to a strongly worded and unwarranted criticism of the Director of Environmental Services’ professionalism.
* The Director of Environmental Services had been embarrassed by the public nature of these remarks.
* The Respondent could reasonably have foreseen that would be a consequence of his remarks.
* Article 10 of the European Convention on Human Rights was discussed in paragraphs 61 to 63 of the Deputy Commissioner’s Report. The comments attributed to the Respondent could reasonably have been regarded as relating to a matter of public administration or of public concern. The Acting Commissioner found that such public criticism was not appropriate and he agreed with the reasons expressed by the Deputy Commissioner at sub paragraphs 63(1) to 63(5) of his report.

**DECISION**

The Acting Commissioner was satisfied that the evidential burden had been discharged in relation to paragraph 65, sub paragraphs (1) to (3) of the Investigation Report, therefore the Respondent had failed to comply with:

1. Paragraph 4.1 (c) of the Code:

‘Councillors hold public office under the law and must act: in accordance with the Standing Orders of your council.’

1. Paragraph 4.13(a) of the Code:

‘You must show respect and consideration for others’; and the Respect Principle: ‘It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public’s regard for and confidence in councillors and councils. You should therefore show respect and consideration for others at all times.’

1. Paragraph 4.14 of the Code:

‘You must work responsibly and with respect, with others and with employees of councils. The ‘Protocol for Relations between Councillors and Employees in Northern Ireland District Councils’ which is included as Appendix 3 in the Code of Conduct for Local Government Employees, is available on the Local Government Staff Commission website’.

**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 QC stated that he would refer to ‘Appendix A’ of the Sanctions Guidelines[[5]](#footnote-5) 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 Procedures for the Adjudication of Cases concerning aggravating and/or mitigating factors that should be taken into account.

Mr Coll QC, stated that the Deputy Commissioner had determined that it was in the public interest for this case to be resolved by employing the Alternative Action Policy[[6]](#footnote-6). The Deputy Commissioner considered the appropriate action would be for the Respondent to attend training on the Code and to apologise to the Director of Environmental Services in the same forum where the comments had been made; that is at a meeting of the full Council. Whilst the Respondent had accepted that he had failed to comply with the relevant Code paragraphs and had agreed to attend training, he declined to make such an apology; he relied on the private apology that he had made to the Director of Environmental Services. The Deputy Commissioner considered the public apology had been necessary to address public interest and gave the necessary redress to the Director of Environmental Services.

Mr Coll QC identified the following mitigating factors:

1. The Respondent had recognised that he had failed to comply with the Code.
2. There had been no other complaints of a similar nature against the Respondent since the introduction of the Code.
3. The Respondent had cooperated with the investigation and the adjudication process except regarding the Alternative Action.
4. The Respondent had attended training on the Code.
5. The ‘community clean-up’ had been an important issue for the Respondent.

Mr Coll QC identified the following aggravating factors:

1. The Respondent is a long serving councillor and had been aware of the Code and the need for respect for others.
2. The Respondent’s actions had been premeditated, there had been three weeks between his original telephone conversation with the Director of Environmental Services and his comments in the Council meeting. He had ample opportunity to consider a more appropriate action but had chosen not to do so.
3. Mr Coll QC referred again to the refusal by the Respondent to engage in the Alternative Action policy.

The Respondent’s representative, Mr Muldoon, acknowledged and agreed with the mitigating factors outlined by Mr Coll QC. He added that there had been no attempt by the Respondent to make a political gain by his comments.

In relation to the Respondent having not engaged with the Alternative Action policy, Mr Muldoon stated that the Respondent had already undergone a relevant training course. He said it was unfortunate that the two parties had not come to an agreement but it would be inaccurate to state that the Respondent had simply disregarded the Deputy Commissioner's proposals for alternative action without due consideration. The Respondent had made an apology to the Director of Environmental Services, which had been accepted, and they continued to have a good working relationship.

**SANCTION**

The decision of the Acting Commissioner made under Section 59(3)(a) of Part 9 of the Local Government Act (Northern Ireland) 2014 was to censure the Respondent.

The Acting Commissioner had referred to the Commissioner’s Sanction Guidelines and had considered all the sanctions set out therein. The principle purpose of sanctions is the preservation of public confidence in local government representatives.

**Mitigating Factors:**

* + The Respondent had a previous record of good service and compliance with the Code.
	+ The Respondent had accepted that he had failed to comply with: Paragraphs 4.1 (c), 4.13(a) and 4.14 of the Code.
	+ The Respondent had already undergone training on the Code.
	+ The Respondent had made a personal apology to the Director of Environmental Services.
	+ The Respondent had a good working relationship with the Director of Environmental Services.
	+ The issue had arisen from a legitimate concern on the part of the Respondent seeking support for a local community clean-up project.

**Aggravating Factors:**

It was unfortunate, given the extent of the Respondent’s engagement with the investigation process, that this matter had not been capable of an ‘alternative resolution’, which the Acting Commissioner would have been happy to facilitate. Considerable additional expense had been incurred in holding this public Adjudication Hearing. The Acting Commissioner’s decision and sanction, however, had not been influenced by that consideration.

**REASONS FOR THE SANCTION**

The Acting Commissioner stated that the principal purpose of sanction is the preservation of public confidence in local government representatives, thus any sanction imposed would be justified in the wider public interest and be designed to discourage or prevent the Respondent, or others, from any future failures to comply with the Code.

Against the background of mitigating factors, it would have been open for the Acting Commissioner to have taken no further action in this case. This, however, was not an inadvertent failure to comply with the Code. The Respondent’s actions were inappropriate and had caused offence and embarrassment to the Director of Environmental Services.

The circumstances of this case were not sufficiently severe for disqualification but the Acting Commissioner had to consider whether partial or full suspension might be an appropriate sanction. Had he been minded to impose this sanction he would have had to be satisfied that one or more of the following applied:

* The conduct was sufficiently severe,
* It had brought the Council or the Councillor into disrepute,
* There was a likelihood of further failures to comply with the Code.

The Acting Commissioner had not been satisfied that was the situation in this case. The Respondent had made a private apology and he had taken steps to mitigate the impact of his actions. It had been a very narrow point of disagreement between the parties which had prevented the alternative resolution. Whilst a good working relationship had continued between the Respondent and the Director of Environmental Services and he had made an apology, these would not be sufficient to address the conduct by which the Respondent had failed to comply with the Code and the manner in which that failure ought to have been mitigated.

The action by the Respondent had fallen short of the ‘Commissioner’s Alternative Action Policy’ issued on 21 June 2016. It states at Appendix A, Action 2(d): ‘Failure to provide a suitable apology or a refusal to provide that apology in the form, manner or form required by the Commissioner will lead to the complaint reverting to the Commissioner for a decision on the next steps’ which is what had occurred here.

The proportionate sanction for the failure by the Respondent to comply with the Code in these circumstances was Censure.

**RIGHT OF 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.

**Date: 20 June 2017**



**Ian A Gordon** **OBE, QPM**

**Acting Northern Ireland Local Government Commissioner for Standards**

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**Annex A**

**Extracts from the Investigation Report of 24 March 2017**

**Paragraph 65:**

I conclude that, in the course of my investigation, I found sufficient evidence that Councillor McGlinchey failed to comply with:

1. Paragraph 4.1 (c) “Councillors hold public office under the law and must act: in accordance with the Standing Orders of your council.”
2. Paragraph 4.13(a) of the Code: “You must show respect and consideration for others”; and the Respect Principle: ““It is acknowledged that the exchange of ideas and opinions on policies may be robust but this should be kept in context and not extend to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public’s regard for and confidence in councillors and councils. You should therefore show respect and consideration for others at all times.”
3. Paragraph 4.14 “You must work responsibly and with respect, with others and with employees of councils. The “Protocol for Relations between Councillors and Employees in Northern Ireland District Councils” which is included as Appendix 3 in the Code of Conduct for Local Government Employees, is available on the Local Government Staff Commission website”.

**Paragraph 47:**

Findings of Fact

1. The following facts are not in dispute:
2. In a phone call to Mr McPeake, Director of Environmental Services, on Thursday 3 September 2016, Councillor McGlinchey requested that funding (of approximately £80-£100) be made available for a community clean-up event in Dungiven that week-end. This was to provide refreshments for the volunteers participating in the event.
3. At a meeting of the Council on 22 September 2015, Councillor McGlinchey raised his concerns about how Mr McPeake had dealt with this request.
4. Councillor McGlinchey had not asked for Mr McPeake’s response to his funding request to be included as an agenda item for discussion at the meeting.
5. Councillor McGlinchey had not given the Mayor, who chaired the meeting, advance notice of his intention to raise the matter.
6. Councillor McGlinchey had not advised the Chief Executive, as Mr McPeake’s line manager, of any concerns he had about Mr McPeake’s response to his telephone conversation.
7. The Council’s Standing Orders requires members to direct their comments to the question under discussion and, specifically, discussion of committee minutes is to be confined to their accuracy.
8. The Protocol for working relationships between council officers and councillors (Appendix K)[[7]](#footnote-7) states that concerns about an officers’ conduct should be raised, in the first instance, with his or her line manager and requires that: ‘*The Councillor must not engage directly with the Employee, nor make any attempt to reprimand or discipline the Employee*’.
9. Councillor McGlinchey spoke to Mr McPeake after the Council meeting (Mr Jackson was also present). The councillor apologised for his tone and he and Mr McPeake shook hands.

**Paragraphs 61-63:**

1. Under Article 10 of the European Convention on Human Rights each of us has right to freedom of expression. In order to protect the democratic process, an elected representative’s right to freedom of expression attracts enhanced protection under Article 10 when those comments are political in nature. This protection covers not only the substance of what was said, but also in the form in which it was conveyed. In a political context, the immoderate, offensive, exaggerated and aggressive may be tolerated where it would not otherwise be. What is ‘political’ is broadly defined and includes matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others.
2. The Courts have found that elected representatives, who voluntarily enter the political arena and who have the right and ability to respond to criticism, should have “thicker skins” and be more tolerant of critical comment than ordinary citizens. The same degree of tolerance is not expected of public officials. The judgment in Hessom [[8]](#footnote-8) sets out the boundaries of acceptable criticism of a public official, the key points are:
3. Public officials are open to criticism, including public criticism. However, it is in the public interest that they should not be subject to unwarranted comments which undermine public confidence in good administration.
4. It is appropriate for the actions and behaviour of public officials to be subject to a greater level scrutiny than a private individual. But the acceptable limits of criticism are not as wide as for elected politicians, who come to the arena voluntarily and have the ability, unlike public officials, to respond in kind.
5. Officers at a senior level are expected to demonstrate a greater degree of robustness in responding to criticism than more junior members of staff. *“****Appropriate challenges***[my emphasis] *to the manner in which non-elected senior public servants do their job, even in very robust terms, are protected by Article 10.**”*
6. The public interest in protecting an official from unwarranted criticism must be weighed against the public interest in the open discussion of matters of public concern and the enhanced protection given to an elected member’s right to freedom of expression.
7. Councillors are quasi-employers of council employees and critical comments made by a councillor have the potential to impair the mutual bond of trust and confidence between the Council and its employees.
8. In my view, the comments attributed to Councillor McGlinchey could reasonably be regarded as relating to a matter of public administration or of public concern. It is likely therefore that the enhanced protection to the right to freedom of expression applied. If Councillor McGlinchey’s challenge was appropriate it would be protected under Article 10. In my view, public criticism was not appropriate in this case for the following reasons:
9. The Protocol sets out the appropriate procedure for councillors to follow where they wish to make a complaint against an officer. Councillor McGlincey’s conduct was clearly outside the requirements of the Protocol.
10. Councillor McGlinchey made his comments contrary to the manner set out in his Council’s Standing Orders. As a result, Mr McPeake had no opportunity to explain to the other members the steps he had taken to assist Councillor McGlinchey or to defend his reputation. Mr McPeake’s statement clearly indicates that he felt this to be particularly unfair.
11. Councillor McGlinchey spoke in a raised voice and he appears to have been somewhat aggressive in tone, although I note that Mr McPeake stated he had not felt threatened.
12. Councillor McGlinchey continued to criticise Mr McPeake despite clear indications from the Chair that his comments were not in order. Councillor McGlinchey also refused to accept an invitation from Alderman Hickey to withdraw his comments despite that fact that the Chief Executive had by this point reminded members that complaints about members of staff should be directed to him.
13. Councillor McGlinchey’s private apology after the meeting and his partial apology during the latter part of the meeting indicate some acceptance on his part that his actions had not been entirely appropriate.
1. The Commissioner has the power to delegate any function under Schedule 1, paragraph 5(8b) of the Public Services Ombudsman Act (Northern Ireland) 2016. [↑](#footnote-ref-1)
2. A copy of the Code can be found at:

<https://nipso.org.uk/site/wp-content/uploads/2016/02/Code-of-Conduct.pdf> [↑](#footnote-ref-2)
3. This can be obtained from the Department for Communities. [↑](#footnote-ref-3)
4. The procedures to be followed by the (Acting) Commissioner in exercising her powers to adjudicate on complaints alleging that a Councillor has breached the Code can be found at: <https://nipso.org.uk/site/wp-content/uploads/2016/09/Adjudication-Procedures-September-2016.pdf> [↑](#footnote-ref-4)
5. The Sanction Guidelines can be found at:

<https://nipso.org.uk/site/wp-content/uploads/2016/08/sanctions-guidelines-June-2016.pdf> [↑](#footnote-ref-5)
6. The Alternative Action Policy can be found at:

<https://nipso.org.uk/site/wp-content/uploads/2016/02/FINAL-Alternative-Actions-Policy-launched-on-21-June-2016.pdf> [↑](#footnote-ref-6)
7. Not included here – can be obtained from the Department for Communities [↑](#footnote-ref-7)
8. Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)], a copy is available at <http://www.bailii.org/ew/cases/EWHC/Admin/2014/1504.html> [↑](#footnote-ref-8)