



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

In the Matter of Alderman John Carson - Mid & East Antrim Borough Council

Reference: 201917997

Decision of the Acting Northern Ireland Local Government Commissioner for Standards following the Adjudication Hearing held on 10 October 2022

The Northern Ireland Local Government Commissioner for Standards, Ms Margaret Kelly, has appointed Mr Ian Gordon, OBE, QPM, as Acting Local Government Commissioner (the Acting Commissioner) in relation to the Adjudication Hearing process in respect of this complaint. Mr Gordon was assisted by Mr Michael Wilson, Solicitor, Legal Assessor.

1. COMPLAINT

On 5 May 2021 the Northern Ireland Local Government Commissioner for Standards (the Commissioner) received a complaint from Councillor Ian Friary alleging that Alderman John Carson a member of Mid and East Antrim Borough Council had, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors (the Code)¹.

The allegation was investigated by Mrs Michaela McAleer the Acting Deputy Commissioner for the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman's Office. The Acting Commissioner has no role in the receipt, assessment or investigation of a complaint.

The relevant parts of the Code where it was alleged the Respondent had failed to comply with the Code are:

POTENTIAL BREACH 1

Paragraph 4.2 states: *'You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as councillor, or your council, into disrepute'*.

This rule applies to councillors at all times, even when they are not acting in the role of councillor.

POTENTIAL BREACH 2

¹ <https://nipso.org.uk/site/wp-content/uploads/2016/02/Code-of-Conduct.pdf>

Paragraph 4.11 states: *'You must ensure that you are aware of your council's responsibilities under equality legislation, and that you are familiar with the relevant legislative statutes and provisions, in particular with the obligations set out in your council's equality scheme. This will enable you to have due regard to the need to promote equality of opportunity on the grounds of age, marital status, disability, political opinion, race, religious belief, sex, sexual orientation, and whether or not people have dependants; and to have regard to the desirability of promoting good relations between people of different racial groups, religious belief or political opinion.'*

Equality Principle:

You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not the person has dependents.'

POTENTIAL BREACH 3

4.13 states: *'You must:*

(a) show respect and consideration for others.

(b) not use bullying behaviour or harass any person...'

Promoting Good relations Principle:

You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms'.

Respect Principle:

'It is acknowledged that the exchange of ideas and opinions and policies may be robust, but this should be kept in context and not extended 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'

POTENTIAL BREACH 4

4.18 states: *'You must not use, or authorise others to use, the resources of your council:*

... (b) in breach of your council's requirements

... (d) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of your council or of the office to which you have been elected or appointed'

The Acting Deputy Commissioner, submitted a report, dated 16 March 2022, to the Acting Commissioner in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014. At paragraph 107 of her report, the Acting Deputy Commissioner concluded there was sufficient evidence that Alderman Carson (the Respondent) had failed to comply with the four provisions of the Code noted above.

2. PRE-ADJUDICATION HEARING REVIEW

On 17 May 2022 the Acting Commissioner determined to hold an Adjudication Hearing into the Complaint. In his Response Form, dated 2 June 2022, the Respondent submitted his Response to the Acting Deputy Commissioner's Investigation Report. He indicated

that he would not attend the Adjudication Hearing, nor did he wish to call any witnesses, and he did not express any intention to be legally represented.

Due to Covid-19, it was decided that meetings of the Northern Ireland Local Government Commissioner for Standards could be held 'virtually' to ensure the safety of participants. A virtual Pre-Hearing Review Meeting, to consider the efficient progression of the adjudication, was convened by the Acting Commissioner, under paragraph 37 of the Procedures for the Adjudication of Cases² (Procedures) document, for 22 June 2022. The Respondent declined to attend or be represented.

The Procedures document, at page 7 paragraphs 25 to 27, sets out the procedure that permits the Acting Commissioner to determine whether there has been a breach of the Code without holding an Adjudication Hearing:

Paragraph 25: Determination of Adjudication without an Adjudication Hearing

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

25a. If no reply is received in response to the notification provided to the Respondent within the specified time or any extension of time allowed by the Commissioner; or

25b. If the Respondent states that he or she does not intend to attend or wish to be represented at the Adjudication Hearing; or

25c. The Respondent does not dispute the contents of the investigation report".

In this instance, the Acting Commissioner determined that in view of the contents of the Respondent's Response Form, dated 2 June 2022, paragraph 25b applied.

Paragraph 26:

Where the Acting Commissioner decides not to hold an Adjudication Hearing, paragraph 26 requires him to *"send to the Respondent a list of the facts, together with any other supporting evidence, that she will take into account in reaching her decision. The Respondent will have 15 working days to submit any further written representations before the Commissioner make her adjudication."*

Having invoked paragraph 25b, the Acting Commissioner then sent the Respondent a list of facts and supporting evidence in accordance with paragraph 26.

Paragraph 27:

"In circumstances where the Commissioner has made a determination as to breach without holding an Adjudication Hearing, she will, except in exceptional circumstances, hold an Adjudication Hearing to make a determination as to sanction."

3. STATEMENT OF FACTS SUPPLIED TO THE RESPONDENT

² <https://nipso.org.uk/site/wp-content/uploads/2016/09/Adjudication-Procedures-September-2016.pdf>

In accordance with paragraph 26 of the Procedures document, a Statement of Facts, together with other relevant evidence, compiled from:

- a. the Report of the Acting Deputy Northern Ireland Local Government Commissioner for Standards, dated 16 March 2022,
- b. the Response Form of Alderman Carson received on 2 June 2022, was sent to the Respondent on 26 July 2022.

Statement of facts

1. Relevant Facts:

- a. The Local Government Act (NI) 2014 provides that the Local Government Code of Conduct for Councillors (the Code) will apply to all Councillors. Alderman Carson is an elected member of Mid & East Antrim Borough Council (the Council).
- b. Alderman Carson signed a Declaration of Acceptance of Office on 20 May 2019 that he had read and would observe the Code.
- c. On 5 May 2021 the Northern Ireland Local Government Commissioner for Standards received a complaint from Councillor Ian Friary alleging that Alderman Carson had, or may have, failed to comply with the Code. The complaint referenced social media comments by Alderman Carson which was reported in two local newspapers.
- d. The Code was in effect when the conduct complained of occurred on 29 April 2021, and at a time when Alderman Carson was a member of the Council.
- e. Alderman Carson posted the subject comment on his Facebook page on 29 April 2021: *'...she will be put back in her kennel'* which was a reference to Ms Michelle O'Neill.
- f. At the time of making the Facebook comment on 29 April 2021, Ms O'Neill was the Deputy First Minister of Northern Ireland and the Deputy Leader of the Sinn Féin political party.
- g. The Irish News and Belfast Telegraph newspapers reported on Alderman Carson's Facebook post on 1 May 2021 and 30 April 2021 respectively. The media articles reflect that on 29 April 2021, the Facebook account of Alderman John Carson changed its 'cover photo' to that depicting Mr Edwin Poots and indicating support for him as Democratic Unionist Party (DUP) party leader. A third party Facebook user posted beneath the new cover photo, a photograph of Ms O'Neill, and the text *'that doll there has led the DUP for many a year unchallenged [shrugging emoji]'*. The post reflects that Alderman Carson's account replied to this comment, stating *'she will be put back in her kennel'*.
- h. Alderman Carson made a second posted comment on his Facebook page on 29 April 2021: *'...In hindsight I realise I have caused offence by a robust comment made in anger I retract the comment and apologise accordingly'*.

- i. Alderman Carson's Facebook profile identifies him as a Councillor.
- j. Alderman Carson used a Council-issued mobile telephone when posting the above comments.
- k. The Facebook exchange of 29 April 2021 was brought to the attention of Ms Michelle O'Neill.
- l. Ms O'Neill informed those investigating the complaint that she thought the Facebook exchange '*...was misogynistic*' and '*...was a deliberate attempt to denigrate [her]... but also to paint [her] as an animal who should be put back in a kennel.*'
- m. Ms O'Neill stated that Alderman Carson's comments, which she described as being '*... part of a nearly acceptable diatribe on social media that people think it's fine to denigrate women...*', did have an impact on her personally and that they had angered her.
- n. Ms O'Neill also stated that the second Facebook posting on 29 April 2021 '*...was a half-hearted apology.*' She considered that Alderman Carson '*tried to justify his words as opposed to apologising*' and she did not accept that the post was a '*robust comment made in anger*' but that '*... its words [were] chosen deliberately to denigrate me and my standing...*'
- o. Ms O'Neill has never spoken to Alderman Carson or had any exchanges with him. She and Alderman Carson have six mutual (shared) friends on Facebook but are not directly connected.

2. Other Supporting Evidence

(Taken from the Investigation report including its Appendices)

- a. On 10 June 2021, Alderman Carson emailed the Senior Investigating Officer (Appendix F). He stated that his comment in respect of Ms O'Neill '*was withdrawn and an apology issued*'. The Senior Investigating Officer sought clarification of this comment from Alderman Carson. On 28 June 2021, Alderman Carson provided a screen shot of a further posting made on his Facebook account on 29 April 2021 (Appendix G) which stated: '*In hindsight I realise I have caused offence by a robust comment made in anger I retract the comment and apologise accordingly*'.
- b. Referring to his own comment, Alderman Carson accepted that he made the comment and said '*I was thrown into a debate, and in a moment of anger and in a moment of robustness I made, which was probably at the end of the day, an inflammatory remark, which I readily accept. Uh, we can all understand that in the moment of robustness and in the depth of debate we can all at times, overstep the mark and go a step further than what we actually mean to do. I'd go to end to making the comment, uh, I'm not trying to place the blame on anyone else. Uh, I was solely responsible for the remark that was made, for the comment that was made, but, uh, I would readily admit, I let myself be led into something*'.

- c. In relation to the language used, Alderman Carson said *'it's an everyday comment...I certainly didn't mean anything, uh, degradant or defamatory or anything by the comment I made...I did say she would be put back in her kennel, but probably, uh, now in this new language, modern age we're living in, I probably did overstep the mark. Uh, well, as I say, in my part, because it's not the type of person I am, uh, it wasn't made in a degrading manner. It wasn't made to try to belittle someone. That was made in the robustness of debate.'*
- d. Alderman Carson denied that he intended to make a pejorative reference to Ms O'Neill. He added that his comment *'wasn't appropriate because, uh, uh, as Councillor Friary has probably not said, but he's indicated if that's the way to put it. Uh, there, there may be the inclination to, to, to take from the comment that I made that I was referring to Michelle O'Neill as an animal, uh, probably because of the female aspect. Councillor Friary was probably insinuating that I was referring to her as being a bitch or something like that. That is definitely not what the intention was. And, uh, that is why, that is why I immediately, uh, within a short space of time, I immediately removed, removed the remark and apologized at that time, because that was not, and I can't emphasise that enough...'*
- e. When asked in interview if he considered the comment was misogynistic. He replied *'Absolutely not. Absolutely not... for someone to turn around and say that I was misdemeaning [sic.]. No, definitely no. And I will, I will not accept that. Council officers, uh, quite a number of our council. Officers are women and I have absolutely, and I'm not blowing my own trumpet, I have absolutely no doubt that I could fill a page of character references that I am definitely not misdemeaning [sic.]'*
- f. Alderman Carson was further asked if his comment was motivated by gender discrimination. He replied *'I wouldn't like to think for one minute. And it would, would take that what I said was discriminatory, certainly I reiterate again, that was not in any way my intention, it was an off the cuff remark, uh, made in the throes of debate and as far as I'm concerned, that's the end of it'*
- g. Alderman Carson was asked if the comment was intended to bully or harass Ms O'Neill. He said *'Absolutely not in any way. Not in any way... I will never, I will never accept that. I myself have had to go and make complaints regarding other councillors bullying me and for anyone to call me a bully? No, not, not, not me because I wouldn't have it...for anyone to put me down as a bully, no, certainly, I would defend that at the highest place.'*
- h. Alderman Carson said *'in hindsight, yes it was disrespectful. Shouldn't have been said. I regret that it was said... Once you made the thing, once you made the comment, once you say the word you can't take it back? I certainly regret it. I'm remorseful for it. I wish I could go back and make it right. I can't.'*

4. STAGE 1 – CONCLUSION OF FINDINGS OF FACT

In his Response Form (2 June 2022), to the Investigation Report, the Respondent has commented on some of the findings by the Acting Deputy Commissioner. He questioned the motives of Ms O'Neill in refusing to accept his apology.

- In this Form he accepted parts of the Investigation Report and he set out why he disputed the allegations made against him.
- He indicated that he would not attend the Adjudication Hearing, nor did he wish to call any witnesses, and he did not express any intention to be legally represented.

In view of this response by the Respondent, the Acting Commissioner wrote to him on 13 June 2022, and outlined the procedure for adjudication in the absence of the Respondent as set out in the 'Procedures for the Adjudication of Cases' document at paragraphs 25 to 27. He advised the Respondent to think carefully about ensuring his position on this matter was fully explored.

By email dated 15 June 2022, the Respondent reaffirmed that he would not attend or be represented at the Adjudication Hearing and would await the Acting Commissioner's findings.

As noted above, a Statement of Facts, together with other relevant evidence, compiled by the Acting Commissioner was sent to the Respondent on 26 July 2022 and he responded by email on 9 August 2022. In this response he did not challenge the content of the Statement of Facts, but stated that his comments were made *'within the context of a political comment, to which Ms O'Neill took offence*. He also acknowledged that he *'may have breached the Code although not to the degree alleged'*.

The Respondent's e-mail of 9 August 2022 also included comments on matters which would only be relevant for the Acting Commissioner to consider should he determine that the Respondent had breached one or more provisions of the Code and the Adjudication therefore proceeded to a Stage 3 hearing. In the following determination of Stage 2 the Acting Commissioner has therefore disregarded those extraneous comments.

CONCLUSION:

The Acting Commissioner has determined that the facts set out in part 3.1 above represent the findings of fact in this matter.

5. STAGE 2 – DETERMINATION ON BREACH

The evidential test for consideration of findings of fact is whether the Acting Deputy Commissioner established to the satisfaction of the Acting Commissioner, on the 'Balance of Probabilities', there had been a failure to comply with the Code. The Acting Commissioner has applied that test to his determinations set out in this part of his Decision.

The Acting Commissioner considered all of the evidence and found as follows:

- A.** The Respondent's Facebook name profile identifies him as a Councillor. The Acting Commissioner was therefore satisfied that he was acting in his capacity as a Councillor at the time of the alleged conduct. The Councillor's Code of Conduct applied to the Respondent. In reaching his decision on the failures to comply with the Code, the Acting Commissioner has considered the Commissioner's Guidance on the Code.

B. The Respondent has failed to comply with the Code at:

Paragraph 4.2 states:

'You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as councillor, or your council, into disrepute.'

The Commissioner's Guidance on the Code (Page 17 p. 4.5.4)³ states that "when considering whether a councillor's actions or behaviour could reasonably be regarded as bringing their position, or their council, into disrepute, she will assess:

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

The Acting Commissioner has carefully considered the analysis by the Acting Deputy Commissioner set out in paragraphs 48 to 58 of her Investigation Report in which she noted:

P48 - It is not in dispute that Alderman Carson made two Facebook comments on 29 April 2021. The first comment was in response to a comment made by another Facebook user, who posted a photograph of Ms O'Neill and commented 'that doll there has led the DUP for many a year unchallenged' ('the originating comment). It is important to note that this comment was made in response to Alderman Carson changing his Facebook cover photo to that reflecting his support for Mr Poots, then a candidate for the leadership of the DUP.

P49 - The investigation found no evidence that the Respondent sought to 'control' the language used by others on this occasion, and rather, he chose to respond to it with a comment of his own, which became the subject of media coverage and a complaint.

P51 - The Respondent admitted he 'probably did overstep the mark' but that it 'was made in the robustness of debate'. When asked about the 'debate' he stated that it was regarding the leadership contest of the DUP and his belief that his favoured candidate, Mr Poots 'wouldn't let people influence him in any way'. However, the Respondent went on to explain that his comment was motivated by 'anger in the community' regarding Ms O'Neill's attendance at the funeral of Mr Storey on 30 June 2020.

P58 - In relation to the language used in the second comment, Alderman Carson again said that he chose the wording without direction or advice from Mr Paisley. He also stated he did not consider any apology guidance in his drafting. I note that Alderman Carson was asked why he did not mention Ms O'Neill in his apology, he stated 'it was directed to anyone who would have taken offence from the comment that was made...the offence covered a wider, a wider spectrum, than just Michelle O'Neill. Therefore, the apology, had to cover a wider spectrum.'

³ <https://nipso.org.uk/site/wp-content/uploads/2018/02/Guidance-for-Councillors-from-the-Northern-Ireland-Commissioner-for-Complaints-April-2017-2-1.pdf>

The Acting Commissioner noted there had been significant critical public comment in media sources concerning the actions and words of the Respondent. The Acting Commissioner did not accept the response by the Respondent, *“that within a short time I removed the comment and made a full apology”*, went any way towards ameliorating his action. Indeed, the impact of his words was compounded even further by his failure to extend a personal apology to Ms O’Neill. He noted Ms O’Neill’s comment in her statement when she referred to the second comment as *‘a half-hearted apology’* in which the Respondent *‘tried to justify his words as opposed to apologising’*.

The Acting Commissioner concurred with the Acting Deputy Commissioner’s comment at Paragraph 75 of her Report:

“the investigation found no evidence, despite Alderman Carson’s description, that the Facebook exchange involved an open discussion regarding political issues. Rather, I consider the wording was a personal attack on Ms O’Neill with a clearly misogynistic tone”.

The Acting Commissioner, taking all the facts as a whole concerning the incident, was satisfied the Respondent’s conduct was likely to diminish the trust and confidence the public placed in his position as a Councillor. He determined that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent’s conduct was such that it brought his position as a Councillor into disrepute.

Whilst the Acting Commissioner found that the Respondent had breached paragraph 4.2 of the Code, he did not find evidence that the Respondent’s conduct had brought his council into disrepute. In coming to this conclusion, the Acting Commissioner noted and accepted the submission of the Acting Deputy Commissioner who had referenced the case of *Livingstone v Adjudication Panel for England*⁴, which concerned offensive comments made by the then Mayor of London, Ken Livingstone. In that case the court drew a distinction between an elected representative bringing themselves into disrepute and bringing his or her office into disrepute:

“While the appellant has a high profile as Mayor, I doubt that many people would regard what he did as bringing disrepute on the office rather on him personally. Misuse of the office can obviously bring disrepute on the office, but personal misconduct will be unlikely to do so.”

The Respondent’s behaviour was unacceptable and offensive. There is, however, no tangible evidence to support the conclusion that it brought the Council into disrepute.

FINDING: The Respondent has breached Paragraph 4.2 of the Code - the Respondent’s conduct was such that it brought his position as a Councillor into disrepute.

POTENTIAL BREACH 2

4.11 states:

‘You must ensure that you are aware of your council’s responsibilities under equality legislation, and that you are familiar with the relevant legislative statutes and provisions, in particular with the obligations set out in your council’s equality scheme. This will enable

⁴ *[2006] EWHC 2533 (Admin)*

you to have due regard to the need to promote equality of opportunity on the grounds of age, marital status, disability, political opinion, race, religious belief, sex, sexual orientation, and whether or not people have dependants; and to have regard to the desirability of promoting good relations between people of different racial groups, religious belief or political opinion.'

Equality Principle:

You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender, sexual orientation, disability, political opinion, marital status and whether or not the person has dependents.'

The Acting Commissioner has considered the Commissioner's Guidance, which at paragraph 4.5.15 states:

'Equality legislation imposes positive duties to eliminate unlawful discrimination and harassment, and to promote equality and good relations. You should be aware that under the law, both you and your council may be liable for any discriminatory acts that you commit. This may apply when you do something in your role as a councillor in a discriminatory manner...

This is reinforced by the Equality Commissions for Northern Ireland's website⁵ which states: *'Section 75 of the Northern Ireland Act aims to change the practices of government and public authorities so that equality of opportunity and good relations are central to policy making and service delivery.'*

It also states: *'to implement their Section 75 statutory duties, public authorities are required to submit an equality scheme to the Equality Commission. This is a statement of commitment to fulfilling their Section 75 duties. It is a plan setting out how they are going to ensure that equality and good relations are promoted in everything they do.'*

Consequently, the Code places an obligation on the Respondent to be aware of his council's obligations, and to have due regard to promote equality of opportunity. The Acting Commissioner agreed with the Acting Deputy Commissioner's conclusion at paragraph 90 of her Report:

"By merit of its Equality Scheme, the council recognises gender as a characteristic to be protected. Given the gender connotation in Alderman Carson's language, which was recognised by public representatives and in the media, I consider there is sufficient evidence to support a conclusion that Alderman Carson may have breached this aspect of the Code. As a result, he has failed to conduct himself in accordance with the Equality principle".

FINDING: The Respondent has breached Paragraph 4.2 of the Code – he has failed to conduct himself in accordance with the Equality Principle.

POTENTIAL BREACH 3

4.13 states:

'You must:

(a) show respect and consideration for others.

(b) not use bullying behaviour or harass any person...'

⁵ www.equalityni.org

Promoting Good Relations Principle:

You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms’.

4.13(a) Respect:

‘It is acknowledged that the exchange of ideas and opinions and policies may be robust, but this should be kept in context and not extended 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’

The Acting Commissioner has considered the analysis by the Acting Deputy Commissioner set out in Paragraphs 94 and 95 of her Investigation Report in which she noted:

- The Respect Principle (page 8 of the Code) where it is acknowledged that exchanges may be robust but that should not extend to individuals being subjected to unreasonable and excessive personal attack; and
- In the Guidance to the Code at Paragraph 4.6.5: where it states, you should keep in mind that rude and offensive behaviour may lower the public’s regard for, and confidence, in councillors.

The Acting Commissioner was satisfied, based on the findings of fact, including the complaint made by Councillor Friary and the statement of Ms O’Neill, that the Respondent’s behaviour and words amounted to an unreasonable and excessive personal attack on Ms O’Neill. The behaviour was also patently offensive to Ms O’Neill.

The Acting Commissioner has had regard to the potential effect of Article 10 of the European Convention on Human Rights, which attracts *‘enhanced protection’* when a councillor’s comments are political in nature; in a political context, the immoderate, offensive, exaggerated and aggressive may be tolerated where it would not otherwise be. He cites the following cases to be relevant:

The judgment in *Heesom v Public Services Ombudsman for Wales*⁶ which reflected on previous caselaw and summarised that Article 10 protects comments made by elected representatives which might be regarded as:

‘Immoderate, shocking, offensive or disturbing. ‘What is regarded as political can include comments on the inadequacy of the performance of public duty by others; it cannot include gratuitous personal comments’⁷.

The judgement in *Sanders v Kingston*⁸, in which the Court stated that the forms of political expression made were: *‘...little more than an expression of personal anger...it does not contain anything which could be dignified with the description of a political opinion of the importation of information’ and therefore did not ‘attract the high degree of protection to which the expression of political opinion is fully entitled’.*

⁶ [2014] EWHC 1504 (Admin)

⁷ Ibid. Paragraph 38 (v)

⁸ [2005] EWHC 1145, p.45

The Acting Commissioner agreed with the conclusion of the Acting Deputy Commissioner at paragraph 69 of her Report:

"... I consider that Alderman Carson's Facebook comments cannot reasonably be regarded as 'political speech'. Notwithstanding the lack of explicit reference, even observation of any political ideology or the performance of public duty by Ms O'Neill, the comments reflect Alderman Carson's personal anger regarding her attendance at Mr Storey's funeral but were very far removed from the original subject of the Facebook post in both context and time".

The Acting Commissioner found that the Respondent was not entitled to benefit from the enhanced protection provided to him by Article 10 of the ECHR. The principles set out in cases such as *Heesom v Public Services Ombudsman for Wales* make it clear that the protection afforded by Article 10 does not extend to "gratuitous personal comments" nor to "personal anger".

The Acting Commissioner found that the Respondent's words were not in the context of a debate in the interests of informing the public nor did what was said relate to a matter of public administration or public concern. As such, it did not attract the enhanced protection under Article 10.

The Acting Commissioner found that the Respondent had failed to comply with paragraph 4.13(a) of the Code and the Respect Principle.

4.13(b) Bullying/harassment

The Commissioner's Guidance on the Code⁹ at pages 25 to 26, describes bullying and harassment:

4.6.6 "unwanted behaviour that makes someone feel intimidated or offended".

4.6.7 "if your criticism is a personal attack on a councillor...or is of a highly offensive nature, this is likely to be considered bullying or harassment and therefore a breach of the Code".

4.6.8 "allegations of bullying and harassment will be considered from the perspective of the alleged victim".

The complaint by Councillor Friary and the evidence of Ms O'Neill described the offensive nature of the Respondent's behaviour and the effect the words caused to Mrs O'Neill; she clearly described the upset it caused to her. The language used by the Respondent in his Facebook comments failed to show respect and consideration for Mrs O'Neill in particular, and to females in general. This was reflected in the media reports. The Acting Commissioner concluded that the comment, "she would be put back in her kennel", referring to Ms O'Neill, was inappropriate and offensive.

This behaviour falls within the definitions of bullying and harassment set out above. The Acting Commissioner found that the Respondent had breached paragraph 4.13(b) of the Code

FINDING: The Respondent has breached Paragraphs 4.13(a) and 4.13(b) of the Code

⁹ <https://nipso.org.uk/site/wp-content/uploads/2018/02/Guidance-for-Councillors-from-the-Northern-Ireland-Commissioner-for-Complaints-April-2017-2-1.pdf>

POTENTIAL BREACH 4

4.18 states: *'You must not use, or authorise others to use, the resources of your council: ... (b) in breach of your council's requirements ... (d) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of your council or of the office to which you have been elected or appointed'*

This potential breach related to the use by the Respondent of his Council issued mobile phone. The Acting Commissioner considered the following:

- Paragraph 4.9.2 of the Commissioner's Guidance: *'The type of resource that falls within this Rule is wide-ranging. It includes – but is not limited to – council-issued mobile phones...'*
- Paragraph 4.9.3 of the Commissioner's Guidance: *'You should ensure that you are aware of, understand and act in accordance with your council's policies on the use of its resources, and that you have regard to any related guidance it provides to you. If you are in any doubt about this matter, you should seek advice from an appropriate person in your council.'*
- Page 11 of the Commissioner's Guidance on Social Media and the Code: *'...you must not use the IT equipment provided by your council for party political purposes or for campaigning in elections...'*

The Respondent stated in interview that the mobile phone he used to make the Facebook comments was issued to him by the Council. Further, he said he was *'not aware'* of any guidance in relation to his use of the mobile phone. There was an obligation on the Respondent, when he was elected to office, to ensure he read and understood the Guidance issued by the Council.

The Acting Deputy Commissioner's Report stated:

"...the action taken by Alderman Carson which resulted in the originating comment being posted, was in relation to the leadership of his political party, the DUP. I consider that the wording used by Alderman Carson in response to the originating comment does not reflect an action taken to facilitate or discharge the functions of the Council and would appear to be solely in relation to a party political purpose".

The Acting Commissioner concluded both the Code and the Guidance clearly cautioned councillors about the use of Council-issued resources and therefore found that the Respondent used his Council-issued mobile phone for 'a party political process', which was in breach of paragraph 4.18(d) of the Code.

FINDING: The Respondent has breached Paragraphs 4.18(b) and 4.18(d) of the Code

6. STAGE 3 - SANCTION

The Adjudication Hearing was resumed at 10am on Monday 10 October 2022 via WebEx. Alderman Carson, the Respondent, attended the Hearing together with his colleague Councillor McDermott.

The Acting Commissioner had received written submissions on mitigation and Sanction from both parties, which have been included in the Record of the Hearing and have been attached to this Decision Report as the following appendices:

Appendix 1 Submissions in relation to Sanction received from the Acting Director of Investigations dated 29 September 2022

Appendix 2 Submissions (redacted)¹⁰ in relation to sanction received from Alderman Carson on 9 August 2022

The Acting Commissioner said the prior submissions on sanction, by both parties, had been very helpful and allowed him to consider the matter before the Hearing.

The Acting Commissioner invited both parties if they wished to elaborate on any part of their submission on sanctions paper, beginning with the Acting Director of Investigations.

The Acting Director of Investigations referred to a document he had prepared in relation to the financial impact on the Respondent should a sanction of suspension be imposed. He informed the Acting Commissioner that if a period of suspension was imposed the Respondent had no other paid employment or business. The Respondent was reimbursed for his work as a councillor under the scheme made under The Local Government (Payments to Councillors) Regulations (Northern Ireland) 2019.

The Acting Director of Investigations said that the Respondent was in receipt of an annual basic allowance of £15,757, which was paid monthly to each councillor. He was a member of the Council's Directs Services and Policy and Resources Committees, neither of which attracted the payment of a special responsibility allowance to members. The Respondent was entitled to claim travel and subsistence allowances where expenditure was incurred in connection with an approved council duty.

In circumstances where a councillor was suspended from carrying out the duties of a councillor in accordance with section 59(5) or section 64(1) of the Local Government (Northern Ireland) Act 2014, the part of the basic allowance payable to the councillor in respect of the period for which the councillor was suspended should be withheld.

The Acting Director of Investigations said the Respondent would experience a financial impact in the event of his suspension.

The Respondent said the council is the only income that he had other than a personal benefit payment which the Acting Commissioner disregarded so, if he was to be suspended and his payment was suspended by the council, it would place him in severe financial difficulty, simply because it was the only income he had.

The Acting Commissioner asked the Respondent if he had any further submission before he retired. The Respondent said the Acting Director of Investigation's submission had referred to whether he had submitted any character references. The Respondent said that he had never been asked for character references which was why he had invited Councillor John McDermott to the Hearing to give that character reference.

¹⁰ The Respondent's submissions have been redacted accordingly given that they refer to matters which are not relevant to the adjudication process involving Alderman Carson

The Acting Commissioner said the prior submissions on sanction by both parties were always very helpful and they allowed him to consider the matter before the actual Hearing and then that is always reinforced by what actually takes place in the sanction Hearing in person. He said it was always important that the councillor appears if they can as it just adds so much to the process.

The Acting Commissioner had regard to the Northern Ireland Local Government Code of Conduct Guidance for Councillors in his decision as well as the Sanctions guidelines. He had considered the submissions by both parties in relation to sanction.

Mitigating factors:

- The Respondent had no prior history of breaching the code.
- He had cooperated throughout both the investigation process and the Adjudication Hearing.
- The Respondent recorded in the Councillor Response Form that he partially accepted the findings of the Investigation Report.
- The Respondent did not bring his Council into disrepute
- The Respondent has been a Councillor for approximately 16 years
- The positive Character reference given by Councillor McDermott

Aggravating Factors:

- There had been significant critical public comment in media sources concerning the actions and words of the Respondent. The Acting Commissioner did not accept the response by the Respondent, *“that within a short time I removed the comment and made a full apology”*, went any way towards ameliorating his action.
- The impact of his words was compounded by his failure to extend a personal apology to Ms. O’Neill. The Acting Commissioner noted Ms. O’Neill’s comments when she referred to the second comment as *‘a half-hearted apology’* where the Respondent *‘tried to justify his words as opposed to apologising’*.
- This was not an open discussion regarding political issues. The Respondent’s behaviour and words amounted to an unreasonable and excessive personal attack on Ms O’Neill.
- The language used by the Respondent in his Facebook comments failed to show respect and consideration for Ms. O’Neill in particular, and to females in general. This was reflected in the media reports.
- The Respondent is an experienced Councillor.

The Sanction Guidelines: at paragraph 3, state that decisions on sanction will aim to uphold the following objectives:

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

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

Available sanctions are set out in paragraph 68 of the Procedures document:

- i. NO ACTION - To take no action in this case is not an appropriate response to the failure by the Respondent to comply with the Code.

His conduct was of a more serious nature and not merely an 'inadvertent' failure to comply with the Code.

- ii. CENSURE – This conduct was not a 'minor failure' as envisaged in paragraph 9 of the Guidance on Sanctions. The Respondent has not fully accepted his behaviour was inappropriate nor did he take adequate steps to mitigate it.

The sanction of Censure was not a suitable sanction.

- iii. PARTIAL SUSPENSION - was more likely to be appropriate where the conduct related to a particular activity or Council business from which the Councillor could be easily removed. The Respondent's conduct, which led to this breach of the Code, was not related to any particular area of Council business. The Acting Commissioner did not find that the Respondent had brought his Council into disrepute.

The sanction of partial suspension was not a suitable sanction.

- iv. SUSPENSION –The Sanctions Guidelines state that suspension was to be considered where the conduct was not sufficiently serious to warrant disqualification, but the conduct was of a nature that:
 - a. it is necessary to uphold public confidence in the standards regime and/or local democracy.
 - b. there is a need to reflect the severity of the matter; and
 - c. there is a need to make it understood that the conduct should not be repeated.

The Acting Commissioner had considered whether or not Disqualification would be an appropriate sanction. Disqualification was the most severe option and the factors which may lead to disqualification are listed in the Sanction Guidelines at paragraph 19 a. to h.

The Acting Commissioner was satisfied that, considering those Guidelines, the conduct in this case did not require disqualification. Of particular relevance was his finding that the Respondent did not bring the Council into disrepute.

Notwithstanding the mitigation the Acting Commissioner considered suspension to be the appropriate sanction for this case.

Reasons:

The Acting Commissioner noted the five cases, submitted by the Acting Director of Investigations, relating to breaches of the Code by Councillors (in this jurisdiction and elsewhere in the UK) where suspension was the sanction imposed. They were very useful to his consideration of this case.

The type and extent of the breaches, with the aggravating circumstances set out, by the Acting Commissioner demonstrated the Respondent's behaviour and words amounted to an unreasonable and excessive personal attack on Ms O'Neill. This was a significant lack of respect. Those actions were widely displayed in the media and brought the Respondent into disrepute.

The Respondent had displayed little foresight nor meaningful hindsight as to his words and actions. In his submission on sanctions, he continued to raise issues concerning Ms. O'Neill rather than reflecting on his own behaviour and his breaches of the Code.

The Acting Commissioner paid careful regard to the Respondent's rights under Article 10 of the European Convention of Human Rights, relevant case law and the fact that such a sanction could be deemed to restrict the Respondent's right to freedom of expression. In addition, he had also taken into account that the purpose of a sanction was not to punish the Respondent. However, the purpose of, and the legitimate aim being furthered by the Code, was to provide for and secure the high standards required from elected Councillors, thereby seeking to protect the rights of others. In relation to Article 10, the Acting Commissioner was satisfied that in construing the Code in the present case, any restriction upon the Respondent's freedom of expression in the context of the facts which he had established, was a necessary and proportionate restriction and did not inhibit the Respondent's right under Article 10 'to hold opinion'.

The Respondent has been a Councillor for approximately 16 years. The Acting Commissioner agreed with the Acting Director of Investigations that, with his experience in the role, the Respondent ought to have been acutely aware of his obligations under the Code. A member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent's conduct was such that it brought his position as Councillor into disrepute.

The Acting Commissioner repeated what he had said in previous Adjudications if such Hearings are to be reduced: Councillors, no matter what years of service they have, must absolutely understand the Code and its Guidance. It was their public duty to do so and, on this occasion, regardless of the mitigating circumstances put forward, Alderman Carson had failed in that duty.

The Acting Commissioner said there was, of course, an equal duty on Councils and their officers to ensure that Councillors are properly trained for their role with regular refresher training.

The Acting Commissioner noted the Respondent's comment in relation to character references, but Part F of the Councillor's Response form did provide for witnesses to be listed to be later called at the sanction stage. The Acting Commissioner, however, gave full credit to Councillor McDermott for his character reference for the Respondent.

The Acting Commissioner understood there were financial implications for the Respondent, and he had taken notice of the potential significant effect of suspension

for the Respondent.

SANCTION:

The Acting Commissioner took into account the Sanctions Guidelines and relevant case law, the facts and circumstances of the case, the Submissions of the Acting Deputy Commissioner and the Respondent. The Acting Commissioner noted the case law referenced within the submissions of the Acting Director of Investigations, to include:

- *Councillor Sean McGlinchey* (NILGSC, 20 June 2017)
- *Councillor Colin Kennedy* (NILGCS, 30 June 2021)
- *Councillor Mark Collins* (NILGCS, 29 June 2022)
- *Alderman Ruth Patterson* (NILGCS, 8 March 2019)
- *Councillor Perry Morgan* (Ref APW/005/2021-022/CT)
- *Councillor William Roy Owen* (Ref APW-006-2021-022-CT)

The Acting Commissioner agreed that these cases were relevant, and he took them into account in reaching his decision on sanction in this case.

In balancing the public interest against the Respondent's personal interest and his Article 10 rights, the Acting Commissioner considered that suspension in this instance was not disproportionate.

The Acting Commissioner said his original thought, based upon the facts and breaches of the Code found in this case, was to impose a period of suspension for 6 months. He was, however, influenced by the personal financial circumstances of the Respondent in this case and that the aim of the Councillor's Code was not to punish but rather to encourage Councillors to work in line with the principles of fairness and openness set out therein.

The Acting Commissioner's decision was influenced by the presumption that the Respondent's council allowance will cease for the duration of the suspension. The conduct of the Respondent was a particularly serious breach, but the Acting Commissioner's role was also to balance the public interest with that of the private interest of the Respondent.

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 suspend the Respondent for a period of 3 months with the suspension to have effect from 12 October 2022. This period of suspension reflected the personal circumstances of the Respondent, but the Acting Commissioner wished to make it clear, but for those circumstances, this case would merit a suspension of at least 6 months.

7. LEAVE TO APPEAL

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

A handwritten signature in blue ink, appearing to read 'Ian A Gordon'.

Ian A Gordon

Acting Northern Ireland Local Government Commissioner for Standards
14 October 2022

Appendix 1 Submissions in relation to Sanction received from the Acting Director of Investigations dated 29 September 2022

To: Information Commissioner.

Dear Sir / Madam.

Thank you for your email relating to the adjudication on my case on Friday 12th August 2022.

Please accept this in response.

You will be aware that throughout this whole case I have displayed remorse and regret for my comment in that I apologised to Ms O'Neill at the earliest opportunity and was quite prepared to face the consequences for my actions with your department in the hope and expectation that I would get a fair hearing by all parties. Your department has treated me with the utmost courtesy and respect, and I thank you for that. I had hoped that Ms O'Neill would have reciprocated but she didn't however we are where we are, but I feel I should add more to what I've already said to highlight certain matters which have happened over that last number of days which may have no direct bearing on the case

[REDACTED]

I stand accused of making a comment against Ms O'Neill which I have apologised for,

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] I have been accused of making a derogatory comment against Ms O'Neill who refused to acknowledge my apology, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Finally may I add this, there are times that councillors make statements that they later regret for one reason or another, then, there are times when a comment is made where one person takes offence but where another person wouldn't, this I submit is politics where the cut and thrust of reasonable comments and political debate is accepted, this is a case where I perhaps could have been more sensitive but hindsight's a great thing but regrettably I didn't see the comment as slanderous or defamatory and when brought to my attention I thought the honourable thing to do was to remove the post and apologise, but the apology has been rebuffed. I stand ready to attend and answer any questions your adjudication panel may wish to ask, however before making your final adjudication I would ask that you take the following into consideration. Having visited the NIPSO website I now offer the following in answer to the questions asked.

Mitigating Factors.

1. When I made the comment on facebook I honestly believed that my actions did not constitute a breach of the code. I made the comment within the context of a political comment, to which Ms O'Neill took offence.
2. The comment was made at a time of heightened political tension within the DUP and was basically in response to comments she and Sinn Fein members had been making in relation to the DUP leadership race.
3. I have a previous record of good service and compliance with the code.
4. Short service not applicable
5. I have a realisation that I may have breached the code although not to the degree alleged.
6. I have co-operated fully with the investigation
7. No other complaints and compliance with the code.
8. Not applicable
9. As stated the comment was made at a time of heightened political tension

10. It could be said that the comment was made in the heat of the moment but perhaps I should have given more consideration given to the outcome

Aggravating factors.

1. No deliberate gain nor exploitation of my position as a councillor
2. No repeated failures to comply with the code
3. No misuse of power or using public funds
4. No intentional bringing council into disrepute
5. No breach of human rights
6. No intentional failure to comply with the code
7. No denial, and no challenge of investigation or adjudication
8. No seeking to blame others
9. No pattern of behaviour
10. No failure to heed advice and warnings This

respectfully is my submission.

Ald John Carson

Appendix 2 Submissions (redacted) in relation to sanction received from Alderman Carson on 9 August 2022

STAGE 3 - ADJUDICATION HEARING – SANCTION- Alderman John Carson (201917997)

Direction of the Acting Commissioner on 22 September 2022 for the Acting Deputy Commissioner to draw to the Acting Commissioner's attention any factors that he may wish to take into account in reaching a decision on sanction, such as previous breaches or other factors which may be relevant to the determination of the appropriate sanction.

Introduction

1. This submission is filed by the Acting Director of Investigations on behalf of the Acting Deputy Commissioner.
2. I can confirm that Alderman Carson has no history of breaching the Northern Ireland Code of Conduct for Councillors (the Code).
3. In terms of mitigating and aggravating factors, there are factors that I consider relevant to the consideration of sanction. In doing so, I make reference to page 9 of the Sanctions Guidelines, Appendix A, headed: '*Factors that the [Acting] Commissioner may take into account when determining the appropriate sanction*'.
4. The applicability and weight of the factors outlined herein is a matter for the Acting Commissioner's discretion. The factors outlined herein are not an exhaustive list and other factors may be taken into account by the Acting Commissioner in reaching his determination.

Mitigating Factors

5. Alderman Carson has no prior history of breaching the Code, which provides some evidence of a '*Previous record of good service and compliance with the Code*'. Alderman Carson is a long-standing councillor of approximately 16 years. This could also be considered an aggravating factor and should be considered alongside paragraph 12 below.
6. At the time of making this submission I am unaware if Alderman Carson has submitted any character references. Where such references have been submitted, they are a matter for the Acting Commissioner's consideration as to whether they provide additional evidence that should be taken into account when deciding on mitigation.
7. Alderman Carson recorded in the Councillor Response Form that he partially accepted the findings of the Investigation Report.
8. Alderman Carson co-operated with the investigation and, insofar as the Acting Director of Investigations is aware, the Adjudication process.

9. There was a limited attempt by Alderman Carson to accept wrong-doing at the time immediately following the conduct by making what is referred to in the Investigation Report as 'the second post'.

Aggravating Factors

10. Appendix A of the Sanctions Guidelines states that the seriousness of the breach can be an aggravating factor. I submit that the findings of breach are serious in this case. The Commissioner found breaches of Code paragraphs 4.2, 4.13 (a) and (b) and 4.18 (b) and (d). I submit that the finding that Alderman Carson failed to conduct himself in accordance with the Equality Principle is of particular seriousness.
11. Appendix A also refers specifically to the Council having been brought into disrepute as an aggravating factor. I respectfully submit that bringing one's position as a Councillor into disrepute is also an aggravating factor. Pursuant to the Sanction Guidelines paragraph 16 (a), a finding of disrepute is sufficiently serious to warrant suspension. This is particularly relevant in this case due to the '*significant critical public comment in media sources*' as noted in the Acting Commissioner's decision in relation to Stages 1 and 2 (page 9).
12. Additional factors which the Acting Commissioner may wish to take into account:
 - a. Alderman Carson stated that he has been a Councillor for approximately 16 years. I respectfully submit that with his experience in the role, he ought to have been acutely aware of his obligations under the Code.
 - b. In the course of the investigation and in the Councillor Response Form, Alderman Carson sought to attach weight as to the motivation of the complainant, and indeed Ms O'Neill as witness.
 - c. It has been adjudicated that Alderman Carson has brought his position as a councillor into disrepute, whilst also being found to have failed to comply with Code Paragraphs 4.11, 4.13(a) and (b) and 4.18 (b) and (d).
 - d. The lack of foresight of Alderman Carson as to the actual and potential impact of his conduct, in particular the impact his failure to reflect the Council's commitment to protecting gender as a characteristic, could have on public discourse and what is considered acceptable of a public representative.

Categories of decision

13. The Acting Commissioner will be aware of the objectives of any decision on Sanction, outlined in paragraph 3 of the Sanctions Guidelines. It is submitted that an important factor in this case is the protection of the public interest in terms of public confidence in the institution of local government, through those democratically elected to represent constituents. The legitimate aim being pursued by the Code is to provide for and secure the high standards required from elected Councillors.
14. I also note, paragraph 6, page 2 of the Sanctions Guidelines states, the Acting Commissioner will take account of the actual consequences that have followed as a result of the Respondent's conduct and will also consider what the potential consequences might have been, even if these did not occur. In this regard, I note that although the Acting Commissioner did not hear directly from the complainant, Councillor Friary, Ms O'Neill's witness statement provided an outline of the impact of Alderman Carson's conduct on her as the subject of the comment made. Ms O'Neill referred to her anger, and a negative discourse around people in public leadership and females in general. As noted in the Acting Commissioner's decision on stages 1 and 2, the impact of Alderman Carson's words was compounded by the failure to extend a personal apology to Ms O'Neill.
15. I make the following comments in full appreciation that the question of Sanction is a matter for the Acting Commissioner in the exercise of his discretion. Pages 2-5 of the Sanctions Guidelines respectively note the options open to the Acting Commissioner in ascending order of severity:
 - a. No action
 - b. Censure- in such terms as the Acting Commissioner thinks is appropriate
 - c. Partial suspension- for such a period as the Acting Commissioner thinks is appropriate but not exceeding one year
 - d. Suspension- for such a period as the Acting Commissioner thinks is appropriate but not exceeding one year
 - e. Disqualification- for such a period that the Acting Commissioner thinks appropriate but not exceeding five years.
16. **No Action**- I would respectfully suggest that 'no action' is not a suitable outcome to these proceedings, given the deliberate nature of the conduct which has given rise to the Acting Commissioner's determination on breach of the Code. The conduct was not an inadvertent failure to comply with the Code. Rather this was conduct that was a result of the councillor's own actions in making the comments that he did regarding Ms O'Neill and in using Council resources to do so.

17. **Censure**- In setting out the aggravating factors in this case, I drew attention to the seriousness of the conduct and the finding that Alderman Carson brought himself in his role as councillor into disrepute. It is respectfully submitted that the Alderman Carson's conduct was not a 'minor failure' as envisaged in paragraph 9 of the Sanctions Guidelines.
18. In considering the suitability of the censure sanction in this case, the decision in the case of Councillor Sean McGlinchey was considered (NILGSC, 20 June 2017)¹. It was noted that the Acting Commissioner censured the Councillor and the conduct in that case concerned the Councillor's behaviour towards a Council officer at a Council meeting and significantly, the disrepute provision was not engaged.
19. **Partial Suspension**- I question whether partial suspension in the circumstances would be applicable in this case. It seems to me that this provision 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. Rather the conduct involved in this case, which involves a failure to show respect and consideration for others via use of his social media, and in the use of Council resources in doing so. I consider this is conduct of a pervasive nature and one which therefore goes to the heart of public representation and the role of a Councillor at every level and on every matter, and not restricted to the exercise of one or more elements of the role.
20. **Suspension** - having determined a breach of the Code by Alderman Carson in relation to the disrepute provisions, it is important to note that this is an aggravating factor in itself and is identified within the Sanctions Guidelines in the suspension category.
21. I have carefully considered Alderman Carson's case, within the framework set out in paragraph 15 of the Sanctions Guidelines which outlines that suspension ought to be considered when the conduct is of a nature that the sanction:
- a. Is necessary to uphold public confidence in the standards regime and/or local democracy
 - b. Needs to reflect the severity of the matter
 - c. Needs to convey the matter should not be repeated.
22. Further, the Sanctions guidelines outline at paragraph 16, factors which may justify a suspension:
- a. *'That the Respondent's conduct has brought the office or councillor or his council into disrepute, without being found to have failed to comply with any other rule contained in the Code...*
 - b. *The likelihood of further failures to comply with the Code by the Respondent.'*

¹ <https://nipso.org.uk/site/wp-content/uploads/2017/06/Decision-Notice-SEAN-MCGLINCHEY-C00055.docx>

23. It is noted that disrepute *is* an element of this case and to be noted Alderman Carson was also found to be in breach of paragraphs 4.13(a) and (b), and 4.18 (b) and (d) of the Code.
24. Page 2 of the Sanctions Guidelines outlines at paragraph 4 that Councillors have been democratically elected to undertake certain tasks and that their ability to serve the public and perform those tasks should only be restricted where such a restriction is justified in the particular circumstances of a case. The Acting Commissioner will also be aware of the requirement to consider Alderman Carson's rights under Article 10 of the European Convention on Human Rights (ECHR).
25. In considering an appropriate suspension sanction, I would draw the Acting Commissioner's attention to the following cases of a similar nature to the present case:
- *Councillor Colin Kennedy* (NILGCS, 30 June 2021)² where the Acting Commissioner imposed a suspension of 6 weeks. The conduct, whilst not concerning social media, attracted similar aggravating and mitigating circumstances as the present case. It is noted that Councillor Kennedy's conduct did not attract the same degree of media attention or public comment and it could be argued the reputational damage was of a lesser extent than that following Alderman Carson's conduct.
 - *Councillor Mark Collins* (NILGCS, 29 June 2022)³ where the Acting Commissioner imposed a suspension of 8 months in respect of similar breaches of the Code. Councillor Collins however did not comply with the investigation process and the breaches included misuse of his position, but not a misuse of Council resources (as is the case in respect of Alderman Carson). It should also be noted that the impact of the conduct in that case was more serious than in the present case.
 - *Alderman Ruth Patterson* (NILGCS, 8 March 2019)⁴ where the Commissioner imposed a suspension of 6 months. Alderman Patterson's conduct was found to have brought her Council *and* her position as Council into disrepute.
 - *Councillor Perry Morgan* (Ref APW/005/2021-022/CT)⁵ where the Adjudication Panel for Wales imposed a 10 month suspension for a Councillor who made disparaging remarks about a fellow Councillor and failed to engage with the investigation. It could be argued that the conduct in that case is more egregious than the present case and was aggravated by the reference to the disability of the person to whom the comment was directed.

² <https://nipso.org.uk/site/wp-content/uploads/2021/07/C00095-Kennedy-Final-Decision-30.06.21-002.pdf>

³ <https://nipso.org.uk/site/wp-content/uploads/2022/06/Acting-Commissioners-Decision-Notice-29.6.2022.pdf>

⁴ <https://nipso.org.uk/site/wp-content/uploads/2019/03/Alderman-Ruth-Patterson-Decision-Notice-8.3.19.pdf>

⁵ [*Panel Dyfarnu Cymru \(gov.wales\)](https://www.gov.wales)

- Councillor William Roy Owen (Ref APW-006-2021-022-CT)⁶ where the Adjudication Panel for Ales imposed a suspension of 9 months as the Councillor he had persisted in a course of conduct of exaggerated, unsubstantiated, and malicious complaints, and had failed to co-operate with the Ombudsman's investigation, which is not a factor in the present case.
26. I would therefore recommend a period of suspension in relation to the breaches of the Code noted.
27. **Disqualification**- On that basis the Acting Commissioner may wish to consider whether the conduct is of such gravity as to warrant disqualification. Page 5 paragraph 19; of the Sanctions Guidelines which states: '*Disqualification is the most severe (emphasis added) of the options open to the Acting Commissioner.*'
28. The Sanctions Guidelines outlines those circumstances in which disqualification may be an appropriate outcome. I have not identified that Alderman Carson's conduct falls within any of these circumstances.
29. I submit that a fundamental consideration in determining whether disqualification is appropriate is the extent of the reputational damage – to the Council- not the office of Councillor. The Investigation report and the Acting Commissioner's decision on stages 1 and 2 of the Adjudication process make clear that the disrepute in this case does not extend to the Council.

Conclusion

30. I consider that the Sanctions Guidelines and relevant decisions indicate that a period of suspension is a suitable sanction in this case. In considering the length of suspension for the five breaches found, I consider a suspension of within the range of 3 to 6 months would be consistent with the similar breaches discussed herein.

Dated this 29th day of September 2022

⁶ [apw-decision-report-cllr-owen-01-22.pdf \(gov.wales\)](#)