



Local Government Act (Northern Ireland) 2014

**In the Matter of Councillor Ian Stevenson
Causeway Coast and Glens Borough Council
Decision of the Acting Northern Ireland Local Government Commissioner for Standards
following the Interim Adjudication Hearing held in the Resolution Centre at the Boat
Building, 49 Queens Square, Belfast, on Thursday 14 March 2019.**

1. Interim Adjudication Hearing:

The Local Government Act (Northern Ireland) 2014 (the Act) sets out the procedure to be followed by the Acting Commissioner, in relation to Decisions on Interim Reports.

Under Section 60(1) of the Act, where the prima facie evidence is such that it appears to the Acting Commissioner:

- (a) that the person who is the subject of the interim report has failed to comply with the Code of Conduct (Code);
 - (b) that the nature of that failure is such as to be likely to lead to disqualification under section 59(3)(c);
 - (c) that it is in the public interest to suspend or partially suspend that person immediately;
- The Acting Commissioner may suspend or partially suspend that person from being a councillor for a period of up to six months.

At the Hearing, the Deputy Commissioner was represented by Michaela McAleer. Councillor Ian Stevenson (the Respondent) was not present when the Hearing began, so Ms McAleer was asked to make submissions on whether or not the Hearing should proceed.

On behalf of the Deputy Commissioner, Ms McAleer said:

- Councillor Stevenson had been informed of the date and time of the Hearing on 28 February 2019. He responded on 5 March 2019 when he sought an adjournment on a number of grounds including his ability to obtain legal representation. Councillor Stevenson was directed to the Bar Library Pro Bono Unit, who may have been able to provide him with representation.
- In relation to his pending appeal on 4 April, Councillor Stevenson had been informed by letter from the Acting Commissioner there was no guarantee that the final outcome to his appeal would be delivered on that date
- It was the Deputy Commissioner's submission that the existence of criminal proceedings was unlikely to justify the adjournment of a disciplinary hearing such as this, particularly where the Respondent had been accused of serious

misconduct. The public interest usually required that such conduct was subject to disciplinary oversight and that, if guilty, a person should not be acting as a Councillor, or indeed, acting unencumbered pending the final outcome of criminal proceedings.

- Councillor Stevenson had declined to return the Councillor Response form issued to him on 28 February 2019 by 8 March 2019. When this was queried on 5 March 2019, he responded: *"I will not be doing anything without getting legal advice which I am seeking funding to get"*.
- The option of proceeding without Councillor Stevenson, or his representative, is open to the Acting Commissioner. The Deputy Commissioner would support such an approach due to the weight of the public interest in going ahead and the very nature of these proceedings, which is to decide whether immediate suspension was necessary.

The Acting Commissioner then adjourned to consider the matter but, before concluding his views, he was informed that Councillor Stevenson had arrived.

The Hearing was reconvened, when the Acting Commissioner accepted the Respondent's explanation for his late arrival. The Acting Commissioner outlined the reason and procedure for the Hearing and identified the persons present and their role. He informed the Respondent that, in his absence, Ms McAleer had made submissions, on behalf of the Deputy Commissioner, to proceed with the Hearing and asked the Respondent if he wished to make any submissions.

Councillor Stevenson submitted:

- In a separate Hearing before the Nursing and Midwifery Council he had been given an adjournment to obtain legal assistance – he cited Article 6 of the European Convention on Human Rights (ECHR) that he had a right to a fair trial and a fair hearing and to legal representation.
- He now sought an adjournment, for this Interim Adjudication Hearing, to obtain legal representation.
- That he had received insufficient time to obtain legal advice and that his financial strictures were such he could not afford to pay for such advice.
- His appeal would be heard on 4 April when hopefully justice would be done and a different outcome.

The Acting Commissioner asked the Respondent what he had done after receiving the notification on 28th of February 2019, in relation to putting together the response that was requested from the Commissioner's Office.

The Respondent replied that he had made it clear in emails that he wanted a legal mind to go over what his response should be.

The Acting Commissioner referred the Respondent to an email which he had sent to the Acting Commissioner's Legal Officer on 11 March 2019 when he had informed the Legal Officer, he was seeking funding for legal representation. The Acting Commissioner asked the Respondent, knowing he would have to pay, if he had not started seeking funding before 11 March 2019.

The Respondent claimed: *"that he did not have the time because he was not aware that the meeting was even actually of the date of the meeting [sic] until more recently"*.

The Acting Commissioner said the notification of the Hearing would have informed him. The interim adjudication procedure had to be expeditious because the criteria behind it is to protect the public interest. Equally, it had to allow the Respondent a reasonable time to deal with matters that were requested in the notification letter. It was a tight time scale, but it was one where the Respondent had to respond.

The Respondent said that was not his opinion, which would be that two weeks was not an ample time to get legal cover and that was why he had asked for an adjournment.

Having heard the submissions of both the Deputy Commissioner's representative and the Respondent, the Acting Commissioner adjourned to consider the matter.

The Hearing resumed, when the Acting Commissioner concluded:

- Proceeding with the Hearing was not disproportionate to the Respondent's rights in relation to a fair hearing, nor was it unfair to proceed. The rights set out in Article 6 of the ECHR were not absolute rights.
- He had taken into account the nature of the interim procedure, which engages the public interest and he was satisfied the Respondent was aware of that procedure.
- There was to be no determination of facts made in the Hearing and the Acting Commissioner did not consider that the upcoming criminal appeal was a sufficient reason to adjourn the interim procedure.
- The interim process had to be expeditious and the Respondent had been given a reasonable time to engage in that process.
- Whatever the decision of the Interim Adjudication Hearing, it would not interfere with the criminal appeal process.
- When making his decision in this Interim Hearing, he would not take into account the decision of the Nursing and Midwifery Council.

The Acting Commissioner continued the Interim Adjudication Hearing.

2. THE COMPLAINT

On 22 November 2018, the Respondent was convicted of sexually assaulting a female work colleague which had taken place in April 2017. On 20 December 2018, he was sentenced to 220 hours community service and was placed on the Sex Offenders Register for 5 years.

An Appeal against that conviction has been lodged and is due to be heard on 4 April 2019.

On 23 November 2018 a written complaint was received by the Northern Ireland Local Government Commissioner for Standards (the Commissioner) from a member of the public, Mr Robert Moore, in accordance with section 55 (1) (a) of the Act. The complaint alleged that Councillor Ian Stevenson, an elected member of Causeway Coast and Glens Borough Council (the Council), had failed to comply with the Code.

It was recorded as: **Complaint number: C00356.**

3. THE INTERIM ADJUDICATION HEARING

The Acting Commissioner reiterated the purpose and the procedures for the Hearing.

The purpose of the Hearing was to determine if there was prima facie evidence that:

- (a) The Respondent had breached the Code;
- (b) The nature of the breach was such as to be likely to lead to disqualification under section 59(3)(c) of the 2014 Act.

- (c) It would be in the public interest to suspend or partially suspend the Respondent immediately.

Prima facie evidence is a legal term which means ‘at first sight’. This refers to the standard of proof under which the party with the burden of proof, here it is the Deputy Commissioner, need only present enough evidence to create a rebuttable presumption that the matter asserted is true. A prima facie standard of proof is relatively low. In assessing whether a prima facie case is made out, the Chair of an Interim Hearing does not decide whether the evidence is likely to be believed, merely whether, if it were, it would establish the necessary things it has to.

The determination by the Acting Commissioner would be based on the Interim Report submitted by the Deputy Commissioner and the oral submissions made by each of the parties on the provisions of Section 60(1) of the Act including sub-sections (a), (b) and (c) and the evidence provided at the Interim Adjudication Hearing.

The Acting Commissioner would not ‘determine facts’ in the Interim Hearing as he would at a full Adjudication Hearing.

The Acting Commissioner was satisfied that:

- The Local Government Act (NI) 2014 provided that the Code would apply to all Councillors.
- The Respondent was an elected member of Causeway Coast and Glens Borough Council (the Council); he had signed the Declaration of Acceptance of Office on 7 June 2014.
- In signing the declaration, the Respondent undertook to observe the Code.
- On 22 November 2018 the Respondent was convicted of a sexual assault on a female colleague
- On 20 December 2018 he was sentenced to 220 hours community service and was placed on the Sex Offenders Register for 5 years

4. SUBMISSIONS BY MS MCALEER FOR THE DEPUTY COMMISSIONER

Ms McAleer referred to the Deputy Commissioner’s Interim Report which outlined: the background to the complaint; the Rules of Conduct which were engaged; the requirements of Section 60 of the Act and how, in the Deputy Commissioner’s view, these requirements have been met.

On 22 November 2018 the Respondent was convicted of the sexual assault which had taken place on 29 April 2017 – a copy of the certificate of conviction was provided. The written complaint from Mr Robert Moore was received on 23 November 2018 and the Respondent was informed by letter on 10 December 2018 that the matter was to be investigated.

The Deputy Commissioner considered the following Principles of the Code were engaged:

- Public Duty
- Leadership
- Respect

The Deputy Commissioner considered this specific Rule of the Code was engaged:

Rule 4.2 – *“You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor or your council into disrepute.”*

This is a Rule which applies at all times, not just when acting as a Councillor (Guidance to the Code para. 4.5.2). The Deputy Commissioner, therefore, was satisfied that the Code

was in effect when the conduct complained of took place.

In relation to:

**i. Section 60(1)(a)
Potential breaches of the Code**

The Deputy Commissioner considered the Respondent's conviction for sexual assault provided prima facie evidence of a breach of Rule 4.2 of the Code.

Ms McAleer had referred to the Commissioner's Guidance to the Code:

Paragraph 4.5.3: *"conduct that results in a criminal conviction, such as a conviction for fraud or assault could reasonably be regarded as bringing your position as a councillor or your council into disrepute"*.

Paragraph 4.5.4: *"in considering whether councillors' actions or behaviour could reasonably be regarded as bringing their position, or their Council into disrepute, she will assess whether that conduct is likely to diminish the trust and confidence the public places in your position as a councillor, or your Council, or is likely to result in damage to the reputation of either and whether a member of the public, who knew all the relevant facts, would reasonably consider that conduct as having brought the position as a councillor into disrepute"*.

Ms McAleer drew attention to the fact that the Respondent's own political party had intervened and suspended him from the party. The Chief Executive of the Council had recorded in his statement that he was of the view that, as a result of his conviction, the Respondent had brought his position as a councillor and the Council into disrepute. Further, it was the view of the Chief Executive that the conduct had also caused reputational damage to the Council and had negatively impacted on public trust and confidence in the Council.

Ms McAleer submitted that despite the alleged incident having occurred in his professional working life, the resultant media publicity, the linkage to the Council and his position as a councillor had been prominently drawn to the attention of the public.

It was the Deputy Commissioner's view that the actions of the Respondent were likely to meet these criteria. The serious nature of the alleged conduct by the Respondent would suggest this may lead to a breach of the Code.

**ii. Section 60(1)(b)
'the nature of the failure is such as to be likely to lead to disqualification'**

Ms McAleer referred to the Sanctions Guidelines paragraph 19, which considered the option of disqualification and specifically two were applicable to this case:

19 g. *"Bringing the Council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, she will consider whether the extent of the reputational damage to the council is so serious as to warrant a disqualification"*

Ms McAleer referred to the Deputy Commissioner's views on 'disrepute and reputational damage' as set out above in 'i. **Section 60(1)(a)**'.

19 h. *"if the conduct giving rise to a failure to comply with the Code is such as to render the Respondent entirely unfit for public office, then disqualification is likely to be the appropriate sanction"*.

Ms McAleer submitted that the seriousness of the conviction for sexual assault was such that it would render the Respondent entirely unfit for public office.

She had referred to the Aims of the Sanctions Guidelines at paragraph 3:

"The Commissioner's consideration of the sanction decision in any case will be based on her view that the principle purpose of sanctions is the preservation of public confidence in a local government representative. Her decision on sanction will also aim to uphold the following objectives:

- *The public interest in good administration,*
- *Upholding and improving the standard of conduct expected of councillors,*
- *And the fostering of public confidence in the ethical standards regime introduced by the 2014 Act."*

It was the Deputy Commissioner's view that a conviction for an offence of this nature would be viewed seriously by the public and was of the type that would diminish rather than preserve confidence in local government representatives and the Ethical Standards Regime, where the councillor would be allowed to continue in his role as a councillor.

**iii. Section 60(1)(c)
'in the public interest to suspend or partially suspend immediately'**

Ms McAleer had referred to the Sanctions Guidelines:

Paragraph 31:

"Even where it is likely that if substantiated, disqualification would result, the Commissioner will be unlikely to impose an interim suspension, or partial suspension, unless there is a compelling reason in the public interest for such an interim suspension to be imposed in advance of the conclusion of the investigation and any other adjudication hearing.

Paragraph 27:

This was of note; in setting out the factors the Commissioner may consider at an Interim Adjudication Hearing, these included:

- The seriousness of the matters alleged against the Respondent,
- The need to allow an investigation of the Respondent's conduct, Ensuring the business of the Council can proceed with as little disruption as possible during the investigation,
- Maintaining the reputation of the Council considered,
- Recognising no definitive finding has yet been made on the validity of the allegations about the Respondent and the Respondent has not yet had an opportunity to respond fully to the matters alleged against him or her and
- The impact of any interim suspension on the Respondent.

Paragraph 32:

Which referred to the additional consideration of '*maintenance of public confidence in the council*'. Specifically, it stated that:

"some allegations may be of such gravity as to lead to a loss of public confidence in the council if the Respondent were to remain in office whilst the allegations are being investigated. Suspension or partial suspension would be appropriate in such circumstances.

Paragraph 33:

"The Commissioner will take into account whether an interim suspension is necessary to ensure:

- (a) the proper functioning of the Council,*
- (b) the maintenance of public confidence, and*
- (c) the effective completion of the investigation."*

Ms McAleer said paragraph 33(c) was not invoked. In this instance, the Deputy Commissioner's view being that 'public confidence' was the most relevant.

The maintenance of public confidence was a compelling reason in the public interest for choosing to suspend/partially suspend a councillor on an interim basis. The aim of the Code was to uphold and improve the standard of conduct expected of councillors and to foster public confidence in the Ethical Standards regime. This matter was about the nature of the public confidence and that such confidence was inextricably linked with disrepute and that there would be a further loss of confidence if the Respondent remained in office.

The Chief Executive had informed the Deputy Commissioner in his statement:

"At this time, I do not have any safeguarding concerns regarding Councillor Stevenson continuing to sit as a councillor. I am mindful, however, that as a public representative his role involves engagement with community groups, his attendance at community facilities such as leisure centres. Several members of staff have raised questions surrounding his suitability to attend leisure facilities in his role as councillor. In my role I am relying on Councillor Stevenson to abide by any constraints put on him by the courts and/or the Council. At this time the Council has not put any such constraints on him, but I intend to examine the matter and then decide whether the Council needs to put any additional constraints on Councillor Stevenson with reference to safeguarding."

Ms McAleer submitted that whilst neither the Court nor the Council had put any constraints on the Respondent, the Deputy Commissioner was satisfied, given the serious nature of his conviction, that the Council had reasonably identified that this was something that might impinge directly on the public and there may be safeguarding issues should the Respondent continue to act as a councillor.

Ms McAleer referred to the impact of the Local Government elections to be held on 2 May 2019 when sitting councillors would end their term of office on 6 May 2019.

Ms McAleer said that the Deputy Commissioner invited the Acting Commissioner to make a finding of an interim suspension for the remainder of the Respondent's term of office.

5. SUBMISSIONS BY THE RESPONDENT

The Respondent submitted that he had not been given the same amount of time as the Deputy Commissioner's representative to prepare his case. He had no legal representation nor

sufficient time, in his view, to address the matter. The Respondent said if he was not allowed

sufficient time in order to get legal cover for this, he would assert that this was a breach of Article 6 of the ECHR and he had the right to a fair trial. He had made that point. He had made it clearly and he did feel that for this Hearing to go ahead, not having been given all the information and not having been given enough time, was unfair.

The Respondent submitted that his financial situation was such that he had difficulty in meeting his monthly expenses and he was not able to pay for legal representation. Any suspension would reduce his income further. He had sought help from other sources but without success in the time available.

The Respondent said that media coverage had been inaccurate. He referred to what the Chief Executive had said in his statement:

“as far as I am aware, the Council has not received any complaints about his conduct”, which was a significant thing.

The Chief Executive had also said:

“Having been asked at this time I do not have any safeguarding concerns regarding Councillor Stevenson continuing to sit as a councillor”.

The Respondent submitted that there had only been one complaint about himself to the Commissioner and the complainant was not from his Council area – nobody from the Council area had made a complaint. A probation report about him had said he was a low risk, which was an important piece of information and it should be considered before making a decision on suspension.

The Respondent returned to his submission that under Article 6 of the ECHR he had a right to a fair trial, to legal representation and sufficient time to prepare a case. He asserted strongly that he had not had enough time to prepare his case and so the Hearing going ahead was in breach of those rights.

The Respondent's wish that these proceedings should not continue was underlined by his belief that his conviction would be overturned by the Appeal on 4 April.

The Respondent had referred to another case regarding potential suspension of a councillor where the Legal Assessor gave advice that it was not relevant to this Hearing.

The Acting Commissioner reiterated that it was an Interim Adjudication Hearing, specified by the Act and not the Commissioner's Office. It is a short period of time, where the Deputy Commissioner believed it appropriate, in the public interest, to submit his Report at the stage which it had reached.

The Legal Assessor gave advice to the Respondent to be absolutely sure that he understood the process set out in Section 60(1) of the Act. The Respondent was then asked if he wished to comment on Section 60 (1) (a), (b) and (c)?

i. Section 60(1)(a)

‘potential breaches of the Code’

The Respondent submitted that he would wish his lawyer, if he could get a lawyer, to present his case.

ii. Section 60(1)(b)

‘the nature of the failure is such as to be likely to lead to disqualification’

The Respondent said that is a matter he would leave to his legal team to provide but he does

not have a legal team.

iii. Section 60(1)(c)

‘in the public interest to suspend or partially suspend immediately’

The Respondent submitted that, in his opinion, he had the right to a fair trial and representation so the matter should be addressed by a suitably qualified legal practitioner.

6. ACTING COMMISSIONER’S FINDING

As set out above, under Section 60(1) of the Act, where the prima facie evidence was such that it appeared to the Acting Commissioner:

(a) that the person who is the subject of the interim report has failed to comply with the Code of Conduct (Code);

(b) that the nature of that failure is such as to be likely to lead to disqualification under section 59(3)(c);

(c) that it is in the public interest to suspend or partially suspend that person immediately;

The Acting Commissioner may suspend or partially suspend that person from being a councillor for a period of up to 6 months.

In deciding on whether the nature of the failure is such as to be likely to lead to disqualification, the Acting Commissioner had considered the Investigation Report, the Procedures for Adjudication Hearings, in particular the Sanctions Guidelines, together with the Guidance issued by the Commissioner in relation to the Code.

The Acting Commissioner, in this case, did not consider the Respondent’s submissions on:

- having been given insufficient time to prepare for the Hearing and
- him not being able to obtain legal representation

were a breach of his rights under Article 6 of the ECHR. The rights were not absolute, he found that the Respondent had been given a reasonable time, in line with the Adjudication Procedures, to prepare for the Hearing.

In relation to his request for an adjournment to allow his appeal against conviction to take place; the potential outcome of the Appeal was not material to a decision on the Interim measures which must be taken in accordance with Section 60 of the 2014 Act. Further, there was no certainty the Appeal would reach a decision on the 4 April 2019.

In relation to:

i. Section 60(1)(a)

‘Prima facie evidence – failure to comply with the Code’

The Code applied to the Respondent. Based on the Deputy Commissioner’s Interim Report, the submissions made by each party and the conviction of the Respondent for a sexual assault, the Acting Commissioner found there was prima facie evidence that the Respondent had failed to comply with the Code.

ii. Section 60(1)(b)

‘the nature of the failure is such as to be likely to lead to disqualification’

Having drawn on the submissions in the Interim Hearing, the relevant procedures and guidance documents, the Acting Commissioner found that, if substantiated:

- The failure to comply with the Code was a serious breach.
- The Respondent’s action had brought the Council into disrepute and the extent of the reputational damage was so serious as to warrant a disqualification.

The Acting Commissioner found that in this case the nature of the failure was such as to be likely to lead to disqualification under section 59(3)(c).

The serious nature of the conduct in question, being a conviction for sexual assault, is such that any sanction short of disqualification would be unlikely to preserve public confidence in local government representatives.

iii. Section 60(1)(c)

‘in the public interest to suspend or partially suspend immediately’

The Acting Commissioner noted that the key principle, when considering sanction, was public interest.

Paragraph 33 of the Sanctions Guidelines set out this interest in a wide context:

“The Commissioner’s consideration of the sanction decision in any case will be based on her view that the principle purpose of sanctions is the preservation of public confidence in local government representatives. Her decisions on sanctions will also aim to uphold the following objectives: the public interest in good administration; upholding and improving the standard of conduct expected of councillors; and the fostering of public confidence in the ethical standards regime introduced by the 2014 Act. Thus, any sanction imposed will be justified in the wider public interest and will be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code, and to discourage similar conduct by others”.

The Acting Commissioner accepted the Deputy Commissioner’s contention that an interim suspension was necessary to preserve public confidence. The conviction for sexual assault was likely to lead to loss of public confidence if the Respondent were to continue in public office.

The Acting Commissioner noted the Respondent’s submission that only one complaint had been received and that was from someone living outside his council area. The public interest, however, cannot be limited to the interest or expression of interest of the public living in his council area.

Suspension or partial suspension of the Respondent should not be seen as a disciplinary option. In this case the conduct alleged, a conviction for sexual assault, was such that a partial suspension would not be appropriate. The conduct complained of would affect all areas of the work of any councillor

Paragraph 33 of the Sanctions Guidelines which required account to be taken of:

- a. the proper functioning of the council;
- b. the maintenance of public confidence; and
- c. the effective completion of the investigation.

There had been media publicity of the Respondent’s conviction. It was difficult to see how this would not be detrimental to the reputation of the Council in the eyes of the public.

The aim of the Code is to improve the standard of conduct expected of councillors and to foster public confidence in the ethical standards regime.

On the prima facie evidence in the Investigation Report, the Acting Commissioner found it likely that there had been reputational damage to the Council. He found it likely 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 and his Council into disrepute.

The Acting Commissioner had taken account of all three elements of section 33 of the Sanctions Guidelines and the weight which should be attached to each element in the circumstances of this case. He had also considered the Deputy Commissioner's submission in relation to partial suspension. The Acting Commissioner was satisfied that a complete interim suspension of the Respondent was necessary in this case.

7. SANCTION

The Acting Commissioner said he was aware that suspension would have a significant impact on the Respondent, both as a councillor and in his personal life. This matter could merit a suspension of 6 months, however, because of the impending local elections on 2 May 2019, the suspension would run until 6 May 2019, which is a consequence of Section 11(2)(c) of the Electoral Law Act (NI) 1962

The impact of the suspension would therefore have a more limited impact on the Respondent than would usually be the case.

The Acting Commissioner accepted that the Respondent would experience personal and financial issues, however, in this case, he was satisfied the 'maintenance of public confidence' outweighed the personal and financial impact on the Respondent.

The decision, made under Section 60(1) of Part 9 of the Local Government Act (Northern Ireland) 2014, was to suspend the Respondent for the remainder of his term of office, until 6 May 2019.

The sanction would have effect from Tuesday 19 March 2019

8. RIGHT OF APPEAL

The Respondent may appeal to the High Court against this decision in accordance with the provisions of Section 60(9) of the Local Government Act (Northern Ireland) 2014.



Ian A Gordon
Acting Local Government Commissioner for Standards

25 March 2019