

# Sanctions Guidelines where a Councillor has been found to have failed to comply with the Code of Conduct

## Introduction

1. The Local Government (Northern Ireland) Act 2014<sup>1</sup> (**the 2014 Act**) provides for the Northern Ireland Local Government Commissioner for Standards (**the Commissioner**)<sup>2</sup> to make an adjudication to determine whether there has been a failure by a Councillor (or a former Councillor)<sup>3</sup> to comply with the Northern Ireland Local Government Code of Conduct for Councillors (**the Code**). In the event the Commissioner determines that there has been such a failure, the 2014 Act requires the Commissioner to decide either that no action should be taken or that one of the following sanctions should apply:
  - (1) that the Commissioner should censure the Councillor in such terms as the Commissioner thinks appropriate;
  - (2) that the Commissioner should suspend or partially suspend the Councillor from being a councillor for such period as the Commissioner thinks appropriate but not exceeding one year or, if shorter, the remainder of the Councillor's term of office; or
  - (3) that the Commissioner should disqualify the Councillor for being, or becoming (whether by election or otherwise), a councillor for such period as the Commissioner thinks appropriate but not exceeding five years.

In deciding what, if any, sanction should be imposed, the Commissioner will consider the available sanctions in ascending order of severity.

## The Sanction Decision

2. The Commissioner will consider these guidelines before making a decision on the sanction, if any, to be applied, following a determination that there has been a failure to comply with the Code. The guidelines are not prescriptive but serve

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<sup>1</sup> As amended by section 62 and Schedule 7 of the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act)

<sup>2</sup> The role of the Northern Ireland Local Government Commissioner for Standards is a statutory function of the Northern Ireland Public Services Ombudsman and the term 'Commissioner' is used throughout this document

<sup>3</sup> Any reference to a Councillor includes a former Councillor

as a guide to assist the Commissioner in making a decision in relation to sanction. The Commissioner retains a discretion to determine the appropriate sanction as the Commissioner sees fit, taking into account the particular facts and circumstances of the adjudication.

3. The principle purpose of imposing a sanction is the preservation of public confidence in local government representatives. The Commissioner's decisions on sanction will therefore 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.

Any sanction imposed on a Councillor found to be in breach of the Code will be justified in the wider public interest and will be designed to discourage or prevent that Councillor from any future failures to comply with the Code, and to discourage similar conduct by others.

4. The Commissioner recognises 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 the Commissioner considers that such a restriction is justified in the particular circumstances of a case.
5. Whilst these guidelines broadly outline the circumstances in which the Commissioner will censure or impose a period of disqualification or suspension, the actual sanction imposed may vary at the discretion of the Commissioner, taking into consideration the aggravating or mitigating factors that are present in a particular case. Examples (non-exhaustive) of mitigating and aggravating factors are provided by way of illustration at Appendix A.
6. In determining the appropriate sanction, the Commissioner will take account of (1) the actual consequences that have followed as a result of the Councillor's conduct, and (2) the potential consequences that may have arisen as a result of the Councillor's breach of the Code. These guidelines do not include guidance on the specific period of disqualification or suspension that will apply to particular failures to comply with the Code. The period of disqualification or suspension is at the Commissioner's discretion.

## **No Action**

7. Circumstances where the Commissioner may find it appropriate to determine that no action needs to be taken in respect of a failure to comply with the Code include:
  - a. an inadvertent failure to comply with the Code;
  - b. a written undertaking from the Councillor that, despite the lack of sanction, there is not likely to be any further failure to comply with the Code on the part of the Councillor.

## **Censure**

8. Censure will generally take the form of criticism of the conduct which was found to constitute or have given rise to a failure to comply with the Code and a warning as to future conduct. Censure may be considered appropriate in circumstances where the Commissioner finds that there has been a failure to comply with the Code; that it would not be sufficient to conclude the case by taking no further action but the circumstances are such that the threshold for a suspension, or partial suspension, is not met. By way of illustration this might include, for example, a deliberate but minor failure to comply with the Code, or a minor failure to comply where the Councillor fully accepts that the behaviour was inappropriate and/or has taken clear steps to mitigate the failure.

## **Partial Suspension**

9. The Commissioner may consider partial suspension to be appropriate where the conduct is not sufficiently serious as to warrant disqualification, but the conduct is 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 reflect the severity of the matter; and
  - c. there is a need to make it understood that the conduct should not be repeated.

While the duration of any partial suspension is a matter for the Commissioner, it is considered that a partial suspension of less than a month is unlikely to have such an effect.

10. Factors which may justify a partial suspension include:
  - a. That the Councillor's conduct has brought the office of the Councillor or their council into disrepute,

- b. The likelihood of further failures to comply with the Code by the Councillor.
11. The Commissioner may consider the option of partial suspension to be appropriate in circumstances where suspending the Councillor from participating in making certain decisions or from having particular responsibilities (such as being the holder of a particular office or a member of a particular committee or subcommittee) provides an adequate safeguard against a future failure to comply, while allowing the Councillor to contribute to the other work of the council.
12. Partial suspension may also be seen as an effective sanction in respect of a Councillor exercising a 'Position of Responsibility' as defined by section 6(1) of the 2014 Act<sup>4</sup>. Partial suspension in such circumstances could safeguard public confidence in the council and enable it to function effectively without depriving the constituents of representation by the Councillor in relation to certain matters or areas of activity.
13. The Commissioner may take into account that a Councillor who is partially suspended may be denied payment of allowances in respect of the responsibilities or duties from which the Councillor is suspended during the period of suspension under the terms of the particular Council's Scheme for the Payment of Allowances to Councillors and Committee Members.

## **Suspension**

14. The Commissioner will consider suspension to be appropriate where the conduct is not sufficiently serious as to warrant disqualification, but the conduct is 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 reflect the severity of the matter; and
  - c. there is a need to make it understood that the conduct should not be repeated.

While the duration of any suspension is a matter for the Commissioner, it is considered that a suspension of less than a month is unlikely to have such an effect.

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<sup>4</sup> Section 6(1) of the 2014 Act provides that the following are positions of responsibility:-

- (a) chair of the council;
- (b) deputy chair of the council;
- (c) chair of any committee of the council;
- (d) deputy chair of any committee of the council;
- (e) member of a cabinet-style executive of the council;
- (f) external representative of the council.

15. Factors which may justify a suspension include:

- a. That the Councillor's conduct has brought the office of the Councillor or his council into disrepute, without being found to have failed to comply with any other rule contained in the Code, or without being disqualified from being a councillor pursuant to section 4(1)(cc) of the 1972 Act<sup>5</sup>
- b. The likelihood of further failures to comply with the Code by the Councillor.

16. The Commissioner may take into account that a Councillor who is suspended may be denied payment of allowances during the period of suspension under the terms of their Council's Scheme for the Payment of Allowances to Councillors and Committee Members.

17. Suspension will not be considered if the Councillor has resigned or has not been re-elected to the council.

## **Disqualification**

18. Disqualification is the most severe of the options open to the Commissioner. Factors which may lead to this option include one or more of the following:

- a. The Councillor having deliberately sought personal gain (for either the Councillor or some other person) at the public expense, by exploiting their membership of the council.
- b. The Councillor having deliberately sought to misuse their position in order to disadvantage some other person.
- c. The Councillor having deliberately failed to abide by the Code, for example as a protest against the legislation of which the Code forms part.
- d. Repeated failures to comply with the Code by the Councillor misusing power within the council or public resources for political gain.
- e. Misusing council resources.
- f. Bringing the council into disrepute. Where the Commissioner finds that the Councillor's conduct has brought the council into disrepute, the Commissioner will consider whether the extent of the reputational damage to the council is so serious as to warrant a disqualification.
- g. If the conduct giving rise to a failure to comply with the Code is such as to render the Councillor entirely unfit for public office, then disqualification is likely to be the appropriate sanction.

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<sup>5</sup> The 1972 Act states that a person shall be disqualified for a period of five years from being elected or being a councillor if he has been found guilty by any court in Northern Ireland or elsewhere in the British Islands and sentenced or ordered to be imprisoned or detained indefinitely or for three months or more without the option of a fine.

19. The duration of a period of disqualification is a matter for the Commissioner. A short period of disqualification may be appropriate where the Councillor is no longer a councillor in circumstances where, had they been a councillor, suspension would have been the likely sanction.
20. Disqualification may be imposed as an alternative to suspension in order to avoid the electorate being left without adequate representation. Disqualification would allow for co-option of a replacement councillor or an election (if it has not been possible to co-opt a replacement) which could not take place if the Councillor concerned was suspended.
21. The Commissioner may take into account the economic impact on the Councillor of disqualification, given the loss of entitlement to allowances.
22. The 1972 Act imposes an automatic disqualification for five years on any councillor who is sentenced to a term of imprisonment of three months or more<sup>6</sup>. That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the Commissioner is of the view that the Councillor is unfit to hold public office and is unlikely to become fit over the next five years, then it may be appropriate to impose a disqualification for five years. Nor, if the matter does come before the Commissioner, would the view be taken that because a Court has imposed a sentence of 3 months imprisonment or longer that the maximum disqualification should automatically be imposed. Such periods of disqualification would not be consecutive. The Commissioner retains overall discretion to decide the sanction to be applied in all the circumstances of the case.

## **Local Elections**

23. Generally the length of a disqualification is likely to be the same whether elections are due imminently, or at some future time. There may sometimes be occasions when the timing of an adjudication decision and the time when a disqualification might expire will result in the penalty having a disproportionate effect on the Councillor due to the timing of an election. The Commissioner may consider submissions in a particular case as to why the length of disqualification should be varied in such circumstances.

## **Action to be taken by the Commissioner at an Interim Adjudication Hearing**

24. The powers available to the Commissioner in respect of a decision on an interim report are set out in section 60(1) of the 2014 Act. The Commissioner may suspend the Councillor wholly or partially from being a councillor if: an investigation interim report finds prima facie evidence of a failure to comply with

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<sup>6</sup> Ibid, 4

the Code; the failure is likely to lead to disqualification; and it is in the public interest to suspend or partially suspend the Councillor immediately.

25. Any interim suspension will be for not more than six months or (if shorter) the remainder of the Councillor's term of office. In the case of a partial suspension, the Commissioner will determine the nature of the activity to which the interim partial suspension is to apply.

### **The Aims of the Interim Adjudication Hearing**

26. At an interim adjudication hearing, the Commissioner's determination may consider factors such as:

- a. The severity of the matters alleged against the Councillor.
- b. The need to allow an investigation of the Councillor's conduct, whether conducted by the Commissioner's staff or by another authority such as the Police Service of Northern Ireland, to proceed as effectively and expeditiously as possible. For example, where the Commissioner is concerned that the Councillor may interfere with evidence or witnesses relevant to the investigation, then suspension or partial suspension is likely to be appropriate.
- c. Ensuring the business of the council can proceed with as little disruption as possible during the investigation. For example, where the allegations are accompanied by, or themselves provoke, a breakdown in relations between the Councillor and other members of the council, or with council officers, then it may be appropriate for the Commissioner to order the suspension or partial suspension of the Councillor.
- d. Maintaining the reputation of the council concerned.
- e. Recognising that no definitive finding has yet been made on the validity of the allegations about the Councillor and that the Councillor has not yet had an opportunity to respond fully to the matters alleged against them.
- f. The impact of any interim suspension on the Councillor.

27. Suspension or partial suspension of the Councillor by the Commissioner at an interim adjudication hearing should not be seen as a disciplinary measure against the Councillor.

28. In circumstances where the Commissioner eventually determines that a Councillor who has been suspended or partially suspended (at an interim adjudication hearing) had failed to comply with the Code, the Commissioner will take the period of interim suspension applied to the Councillor into account in determining the sanction, if any, to be imposed at the final Hearing.

### **Interim Adjudication Hearing – No Suspension or Partial Suspension**

29. Interim suspension or partial suspension will not be imposed if, at the interim adjudication hearing, the Commissioner is of the view that even if the allegation(s) were substantiated, the Commissioner would be unlikely to disqualify the Councillor.
30. The Commissioner will not impose an interim suspension or partial suspension unless there is a compelling reason in the public interest to do so.

### **Interim Adjudication Hearing – Suspension or Partial Suspension**

31. Some allegations may be of such gravity as to lead to a loss of public confidence in the council if the Councillor were to remain in office whilst the allegations are being investigated. Suspension or partial suspension would be appropriate in such circumstances.
32. The Commissioner will at the interim adjudication hearing take into account whether an interim suspension is necessary to ensure the proper functioning of the council, the maintenance of public confidence and the effective completion of the investigation. The Commissioner will only impose an interim suspension in circumstances where those aims cannot be met by the Commissioner either making no order for suspension, or making an order for partial suspension.
33. Partial suspension may be particularly appropriate where a Councillor exercises a 'Position of Responsibility' as defined by section 6(1) of the 2014 Act<sup>7</sup>. Partial suspension in such circumstances may be necessary to safeguard public confidence in the council and enable it to function effectively without depriving the constituents of representation by the Councillor.

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<sup>7</sup> Ibid, 5



## **Factors that the Commissioner may take into account in determining the appropriate sanction**

### **Mitigating Factors**

- An honestly held (although mistaken) view that the action concerned did not constitute a failure to follow the provisions of the Code, particularly where such a view has been formed after taking appropriate advice.
- Substantiated evidence that the Councillor's actions have been affected by ill health or other adverse personal circumstances.
- Previous record of good service and compliance with the Code.
- Short length of service or inexperience in a particular role.
- Recognition by the Councillor that there has been a failure to follow the Code; co-operation in rectifying the effects of that failure; an apology to affected persons where that is appropriate; self-reporting of the failure to comply by the Councillor.
- Co-operation with the investigation and the Adjudication Hearing.
- Substantiated evidence of compliance with the Code since the events giving rise to the adjudication.
- Actions which may have involved a failure to comply with the Code, but which had some beneficial effect for the public interest.
- Provocation
- Heat of the moment – debate in council chamber.

### **Aggravating Factors**

- Deliberate personal or political gain (for the Councillor or others) at public expense by exploiting position as a Councillor.
- Repeated failures to comply with the Code.
- Misusing powers or using public funds for political gain.
- Actions brought the council into disrepute.
- Dishonesty.
- Breaching the Human Rights (as defined by the ECHR) of others.
- An intentional failure to comply with the Code.
- Continuing to deny the facts despite clear contrary evidence; challenging investigation and adjudication to the end.
- Failure to co-operate with the investigation and/or adjudication process and/or comply with the Commissioner's directions in relation to the adjudication
- Seeking unfairly to blame other people.
- Persisting with a pattern of behaviour that involves repeatedly failing to abide by the provisions of the Code.
- Failing to heed appropriate advice or warnings, or previous findings of a breach of the Code.