



Northern Ireland

Local Government

Commissioner for Standards

Annual

Report

2019~2020



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Commissioners Annual Report 2019-20

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Foreword by the Commissioner



The Local Government Code of Conduct for Councillors sets out the ethical standards to be followed by all councillors in Northern Ireland. Its purpose is to ensure good governance and to maintain public trust and confidence in local government.

As the Local Government Commissioner for Standards I have the authority to investigate and to adjudicate on complaints that councillors have failed to comply with the Code. To make sure there is a clear separation between the investigative and adjudication functions of the Office all investigations have been delegated to the Local Government Ethical Standards directorate, led by the Deputy Commissioner.

I became Commissioner in August 2020. Prior to this point the post had been vacant from July 2019 after my predecessor Ms Marie Anderson's departure to take up the position of Police Ombudsman for Northern Ireland.

Unfortunately, by law, without a Commissioner the Office was unable to adjudicate on matters before it. The Deputy Commissioner was also unable to refer matters for adjudication. This meant that between July 2019 and March 2020 no Adjudication Hearings could be held. Information about the Hearings which did take place during the reporting year, between April 2019 and July 2019, can be found in Section 2 of this report.

However, throughout the year the Deputy Commissioner and the Local Government Ethical Standards (LGES) team continued to investigate complaints about the conduct of councillors. The work done by this team is covered in detail in Section 1 of the report.

I would like to take this opportunity to place on record my thanks and appreciation to Ms Anderson for her work, first as Deputy Commissioner from 2014, and then as Commissioner from 2016 until 2019, and for her commitment throughout this time to putting ethical standards at the heart of local government in Northern Ireland.

Moving forward for the year ahead I am keen to engage with councillors, their representative organisations and Chief Executives of councils to ensure that there is a full and thorough understanding of the Code. During the coming year we will ensure more regular engagement and information sessions for councillors. I hope that a focus on learning and improvement will see the Code become more fully embedded in the conduct of councillors' everyday political lives.

Margaret Kelly

Northern Ireland Local Government Commissioner for Standards

Section One Investigations

How complaints are investigated

The Commissioner has delegated the authority to conduct investigations to the Deputy Commissioner and the Local Government Ethical Standards Directorate (LGES) team. The Commissioner therefore has no involvement in the investigation of individual complaints. The arrangements for this separation are set out in a detailed protocol.

For the period of this report, the LGES Directorate was comprised of a Director of Investigations, two Senior Investigating Officers and an Administrative Officer.

Complaints that a councillor has or may have failed to comply with the Code must be made directly to LGES and must be made in writing. A complaint form is available to help complainants with the process. Anonymous complaints are not normally investigated.

Complainants are asked to provide LGES with as many details as possible, including:

- Their personal details
- Details of who they are complaining about
- What they are complaining about

- Whether they have any evidence to support their complaint, including whether there are any witnesses.

The requirement for supporting evidence at this stage helps to keep vexatious, malicious or frivolous complaints to a minimum.

All complaints are assessed by LGES. There are two stages to this process:

- Can we investigate? Is there a complaint in writing against a named councillor and does that complaint relate to conduct covered by the Code?
- Should we investigate? Is there evidence of conduct which, if proven, indicates a breach of the Code and would an investigation be in the public interest?

Investigators also need to consider a number of factors when deciding whether a complaint should be referred for investigation. The more serious the alleged breach, the more likely it is that an investigation is required. Another factor would be whether an investigation, and possible adjudication, would be proportionate, especially when weighed against any action or likely sanction.

As required by the 2014 Act, all LGES investigations are carried out in private. This is necessary to protect the reputation of those complained of, the

privacy of witnesses and the integrity of the investigation.

The investigation process also needs to be fair and transparent. This means that councillors are made aware of the allegations against them at the outset, as well as the name of the complainant(s). Fair process also requires that councillors or their representatives are given an opportunity, at each stage of the process, to make representations to LGES and to provide evidence to the investigation.

Where the outcome of an investigation is that the Commissioner should adjudicate on the matter investigated, councillors have an opportunity to comment on the draft investigation report prior to the conclusion of the investigation and to have those comments considered before the report is finalised.

The investigation process also needs to be timely. The time taken to complete an investigation is dependent on a number of factors, including the complexity of the complaint, the availability and timely submission of relevant evidence, and the extent to which the councillor and other relevant witnesses co-operate with the investigation.

Alternative Actions

The Deputy Commissioner may decide to resolve a complaint through a policy known as alternative action. This avoids the cost and resource implications of an investigation and/or an adjudication. The alternative actions are also intended to encourage compliance with the Code of Conduct and to deal with potential breaches in a proportionate and appropriate manner.

An alternative action may be recommended where, for example, a councillor is likely to be found in breach of the Code but it is not likely that this would result in any action or significant sanction.

Caseload

In 2019-20 the Investigations team received **41** complaints that councillors had breached the Code. These **41** complaints compare to **62** complaints received in 2018-19. The complaints related to **30** councillors.

When several complaints about the same councillor and the same or closely related issues are received, we investigate them as a single case. However, we continue to report the number of complaints when reporting our caseload. At the start of the reporting year there were already **66** complaints ongoing from the previous year, meaning that the Investigations team's caseload for the year totalled **107** complaints. This compares to a total of **94** for 2018-19.

A total of **22** complaints were about councillors' behaviour towards other

people. These related to Section 4.13 of the Code, which states that councillors must: (a) Show respect and consideration for others; (b) Not use bullying behaviour or harass any person; and (c) Not do anything which compromises, or which is likely to compromise the impartiality of those who work for, or on behalf of, the council.

The second largest area (**10** complaints) related to the section on obligations as a councillor. This section requires councillors to act lawfully, in accordance with the Code, and not to act in a manner which could bring their position as a councillor, or their council, into disrepute.

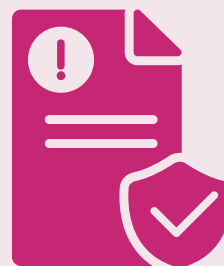
The third largest area related to disclosure and declaration of interests. There were **6** complaints that councillors had breached this section of the Code.



41 complaints received
compare to **62 complaints**
received in 2018-19



66 complaints ongoing
from the previous year



107 complaints assessed
or investigated during
the year

Case closures

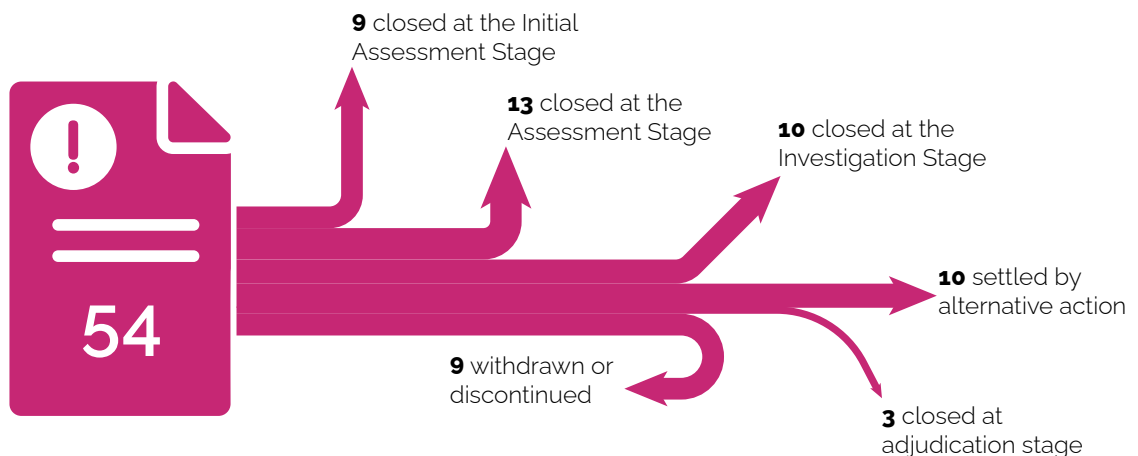
The investigations team closed **54** cases during 2019-20. Of these;

- **9** were closed at the Initial Assessment Stage, which looks at whether the complaint relates to conduct covered by the Code.
- **13** were closed at Assessment Stage, which looks at whether there is evidence of conduct which, if proven, indicates a breach of the Code.
- **10** were closed at the Investigation Stage, where it was decided that there was no evidence of any failure to comply with the Code
- **10** were settled by Alternative Action, a policy which seeks to resolve complaints without the cost and resource implications of further investigation and/or an Adjudication
- **3** cases were closed at the Adjudication stage
- **9** complaints were withdrawn or discontinued.

Performance

LGES' Key Performance Indicators state that each complaint should be assessed within 4 weeks to determine if an investigation is warranted. In 2019-20 this KPI was met in 95% of complaints against a target of 85%

LGES aims in 60% of the investigations it undertakes, to complete the investigation of a complaint within 40 weeks of receipt. In 2019-20 this key performance indicator was met in 65% of complaints investigated.



CASE SUMMARIES

Complaint about councillor's social media posts not accepted for investigation

Complaint

A member of the public complained that a councillor in Derry City & Strabane District Council was responsible for two anonymous social media accounts on which he posted offensive and insulting comments about specific individuals.

The complainant provided a number of Facebook and Twitter posts in support of his allegations.

Assessment

The Investigating Officer interviewed the councillor and obtained further information from the complainant. The complainant clarified that the first account he was referring to was only to provide context for the overall complaint, and that he had no specific concerns about any particular tweet made on it.

In relation to the second account, he submitted nine posts from the councillor's personal Facebook page which contained a number of similar spelling mistakes to posts on the account. This, he said, was evidence that the posts were made by the councillor.

The councillor admitted setting up the first account, but stated it was done in a private capacity. He denied

responsibility for the posts on the other account.

Decision

The Deputy Commissioner looked at whether the contents of the first account could be considered under the Code of Conduct.

He noted that the Commissioner's Guidance on using social media encourages a clear demarcation between personal and professional personas. It also refers to the requirement for councillors to be clear what role they are acting in when posting online. As the account in question did not identify the councillor, and given that none of the tweets were alleged to have been disrespectful, he decided that there was no evidence of a breach of the code.

In relation to the second account, he decided that the evidence of the spelling mistakes was not sufficient to indicate that the councillor was the author of the posts. It was therefore not necessary for him to consider the complaints about them.

He decided that the complaint failed to meet the criteria for investigation.

Councillor failed to register and declare interests

Complaint

A member of the public complained that a councillor failed to declare he was a member of an organisation which made a presentation to Belfast City Council.

The presentation, by the Andersonstown Regeneration Committee (ARC), was one of six given to Belfast City Council's Strategic Policy and Resource (SPR) Committee on the redevelopment of Casement Park. The councillor was a member of this committee. The complainant said that the councillor did not tell the meeting he was also a member of ARC. He also said that he had not previously registered his interest in ARC with the Council, and that this was a breach of the Code of Conduct.

Investigation

The Deputy Commissioner looked at the rules relating to the disclosure and declaration of interests. Paragraph 5.2 states that a Councillor is required to register any personal interest (financial or otherwise) in any body whose principal purposes include the influence of public opinion or policy in which they have membership.

The investigation looked at the Council's Register of Interests and found that the councillor had not registered his membership of ARC.

It also heard from the councillor that although he was a member of ARC, (which was formed to promote the

general regeneration of the Andersonstown area), he was not an office bearer of that group.

Following the meeting, the committee issued a statement which welcomed the investment in the stadium, but which also recognised the primacy of the Planning Committee in decision making relating to the development.

Decision

The Deputy Commissioner found that ARC was a 'body whose principal purposes include the influence of public opinion or policy'. As such he believed that the councillor had a significant non-pecuniary interest which he should have declared to the meeting.

Although the nature of his non-pecuniary interest did not stop him from being at the meeting or from speaking or voting, he should have sought dispensation under paragraph 6.9 of the Code of Conduct. This allows participation for those who are members or supporters of organisations formed for a public purpose (such as ARC).

However, the Deputy Commissioner also recognised the specific features of this case, including that:

- the councillor asked the Council's solicitor for advice on the issue prior to the SPR Committee meeting
- the councillor was a member of ARC and not an office bearer of that organisation

- there was no evidence that he took any part in the preparation of the ARC presentation or took part in its presentation.

Having carefully considered the facts and circumstances of this case the Deputy Commissioner found that no adverse consequences arose from what could be described as a 'technical breach' of the Code of Conduct.

Section 55(2) of the Local Government Act (Northern Ireland) 2014 provides that "Instead of, or in addition to, conducting an investigation under this section, the Commissioner may take such action as appears to the Commissioner to be desirable to deal with any particular case".

He therefore decided that the most efficient, effective and proportionate means of resolving the complaint was to use the Alternative Action policy. Under this course of action the councillor was asked to update his register of interests to reflect that he held membership of ARC, and to attend refresher training on the Code, specifically familiarising himself with the Commissioner's Guidance on the Code on the rules on the registration and disclosure of interests.

Councillor's Facebook post was 'political expression'

Complaint

The Deputy Commissioner received a complaint that a councillor had breached the Code of Conduct by uploading an inappropriate post on social media. The post on the councillor's Facebook page contained a photograph of a burning Sinn Fein election leaflet. Next to the image was the text 'Finally found good use for our Sinn Fein literature.'

The complainant said that this comment was intimidating and incited hatred.

Investigation

The investigation found that the post was made during the campaign for the local government elections in May 2019.

Investigators interviewed the councillor who said that he had not taken the photograph, but that it had been sent to him by a family member. He had however posted it on his page and written the attached comment, along with a smiling face emoji.

He said it was not his intention to incite intimidation or hatred towards any individual, nor did he believe that the post instructed anyone to burn Sinn Féin election literature. He considered the post to be humorous, and reflected the reality of what happened to election material when it is left over from a campaign.

He also said that he was not aware at the time of uploading the post that a Sinn Fein election poster in the area had been burnt 11 days earlier.

The Deputy Commissioner examined the councillor's conduct against the Code of Conduct. Paragraph 4.12 explains to councillors that:

'You are entitled to legally express any political opinion that you hold. In doing so, however, you should have regard to the Principles of Conduct and should not express opinions in a matter that is manifestly in conflict with the Principles of Conduct.'

Paragraph 4.13a states that; 'You must show respect and consideration for others.'

The Deputy Commissioner also looked at the European Convention on Human Rights (ECHR) and the protection given to the right of freedom of expression contained in Article 10.

As part of the investigation it was also found that the Police Service for Northern Ireland did not consider the matter to be criminal.

Decision

Having reflected on all of the evidence in this case, the Deputy Commissioner was satisfied that the councillor's Facebook post constituted political expression, and was therefore not in breach of the Code.

He noted that those standing for political office put themselves in the public eye, expecting that freedom of expression will form part of a vibrant and robust debate. He believed that the post constituted part of that debate.

While the Commissioner's Guidance on the Code makes it clear that there is no place for bullying, grossly offensive or dangerous behaviour, he concluded that the post did not constitute intimidation or hatred. No action was taken against the councillor.

Investigation finds councillor entitled to speak on matter of non-pecuniary interest

Complaint

A member of council complained that a fellow councillor should not have brought forward a council motion relating to Libraries Northern Ireland. He alleged that as the councillor was a paid member of the Board of Libraries NI, there was a 'clear pecuniary interest' in his actions, and that he had breached the Code of Conduct.

Investigation

The motion stated that *'This Council agrees that an all-party delegation meet with representatives of Libraries NI and the Department for Communities, in firm support of the proposals to have the Belfast Central Library restored and extended.'*

The investigation found that the councillor had served as a Board member of Libraries NI for over two years. At the meeting he stated that he was a Board member, but that he had checked the Code of Conduct and was satisfied that there was no conflict of interest in him bringing the motion.

It also found that the councillor had previously registered his interest in Libraries NI in the Council's register of interests.

Once he had proposed the motion, the councillor left the Council chambers and did not vote on the motion.

Paragraph 6.9 of the Code explains to councillors that it would be *'appropriate for you to remain at a council meeting and speak and vote on a matter in which you have declared a significant private or personal non-pecuniary interest if your interest arises because you are ... a member of a public body.'*

The Deputy Commissioner was satisfied that the councillor's interest in Libraries NI could be defined as a 'non-pecuniary' interest, as opposed to pecuniary (ie. financial) which the complainant had alleged. This was because Libraries NI is a non-departmental public body which reports directly to the Department for Communities, with no corporate link to local government. The councillor's membership of the Board therefore equated to membership of a public body.

Decision

After examining the evidence the Deputy Commissioner decided that as the councillor had declared his non-pecuniary interest before proposing the motion, it was appropriate for him to remain at the Council meeting and speak.

He therefore decided that there was no evidence of any failure to comply with the Code.

Councillor apologises after disclosing commercially sensitive information

Complaint

The Deputy Commissioner investigated a complaint that a councillor in Mid and East Antrim Borough Council disclosed confidential information in a speech at a council meeting in February 2019. In particular, the complainant alleged that the councillor had made public the council's allocated budget to buy and repair a number of properties in Ballymena.

The councillor's comments were later published in the Ballymena Guardian.

The complainant said that the information revealed by the councillor was commercially sensitive. This meant that based on the information in the newspaper article, the owner of the properties rejected the council's offer, believing that it was willing to pay more.

Investigation

The Deputy Commissioner looked at paragraph 4.15 of the Code of Conduct, which says that councillors *'must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required to do so by law.'*

The investigation found that the acquisition of the properties was discussed in a closed session of the full council meeting in January 2019.

When speaking at an open session of a council meeting on 13 February the councillor revealed the amount of money the council had set aside for the properties. This included a repair and upgrade fee in addition to the purchase price. The information was disclosed as evidence of how savings could potentially be made for rate-payers.

However, the investigation also found that a week before the council meeting the owners of the properties had turned down the Council's offer. Therefore contrary to what was alleged, the councillor's speech did not have any bearing on the owner's decision.

Decision

Having carefully considered the complaint the Deputy Commissioner decided that this matter should be dealt with by way of Alternative Action.

The purpose of Alternative Action is to deal with potential breaches of the Code in a proportionate and appropriate manner, and seek a satisfactory resolution of complaints without the cost and resource implications of an adjudication.

The Deputy Commissioner decided that the disclosure by the councillor, whilst deliberate, was done without the foresight or understanding on his part that the information shared in open council session breached confidentiality.

It was also found at interview that the councillor showed a lack of knowledge and general understanding of the rules around confidentiality. It was clear that he had not understood the potential impact his disclosure of the Council's allocated budget may have had on the negotiating position of either the Council or the owners of the properties.

The councillor was informed that as part of the Alternative Action he should provide a verbal, public apology at the next Council meeting held in open session. This apology should be to the council and any member of the public affected by the disclosure of the confidential information.

He was also informed that he should participate in further training on the Code, with a particular focus on confidentiality.

Section Two Adjudications

Following an investigation, if the Deputy Commissioner believes an Adjudication Hearing is needed, the case is referred to the Commissioner. Only the Commissioner, or someone appointed by them as Acting Commissioner, can decide whether a councillor has breached the Code. The Commissioner will be advised by a qualified Legal Assessor, who does not take part in the decision-making. Adjudication Hearings are usually held in public, unless exceptional circumstances apply.

Prior to any Hearing the Commissioner may hold a pre-adjudication review meeting. This is to consider things such as the submission of legal arguments and agreed facts, and is aimed at reducing the amount of time spent on procedural matters at the main Hearing.

At a full Adjudication Hearing the Deputy Commissioner or their representative will be invited to make submissions as to why, on the facts found, the Commissioner should decide that the councillor has failed to comply with the Code. The councillor or their representative will be given the opportunity of responding to those submissions.

After hearing the evidence, the Commissioner will determine whether there has been a failure to comply with the Code. If it is decided that there has been no breach then no action will be taken. If a breach is found, the options are that:

- no action should be taken
- the councillor should be censured, which may involve the Commissioner issuing a warning as to the councillor's future conduct
- the councillor should be suspended, or partially suspended for a period not exceeding one year
- the councillor should be disqualified from being a councillor for a period not exceeding five years.

Because the post of Commissioner was vacant between July 2019 and the end of the reporting year, it was not possible to hold any Adjudication Hearings during this period. Prior to July there were two Hearings. These are summarised below.

Councillor censured over failure to declare interest in planning application

Complaint

In January 2017 a member of the public complained to the Commissioner about Councillor Mervyn Rea's conduct at a hearing of the Council's Planning Committee in October 2016. At this meeting an application for planning permission for a pig farm in Newtownabbey was being discussed. Although Mr Rea was not a member of the Planning Committee, he spoke in support of the application.

The complainant asked whether Councillor Rea would gain financially as a result of the application being approved, and therefore whether there was a conflict of interest in him speaking at the meeting.

The Deputy Commissioner began an investigation, looking to address whether Mr Rea had used his position improperly to secure an advantage for himself by speaking on a matter in which he had a pecuniary interest, rather than withdrawing from the meeting when the matter was being discussed.

Investigation Findings

Following the investigation the Deputy Commissioner concluded that there was evidence that Mr Rea had failed to comply with aspects of the Code of Conduct.

In particular he found that as an agent for Hermitage AI, a pig breeding company which traded with the pig farm, Mr Rea would likely have benefited from an increase in sales if the planning application was approved.

The Deputy Commissioner believed therefore that Mr Rea had a pecuniary interest in the planning application which he did not declare before he spoke in support of the planning application. He believed this breached paragraphs 6.1 and 6.2 of the Code.

He also found that Mr Rea had not provided investigators with a full explanation of his relationship with Hermitage AI or documentation from Hermitage AI to evidence this relationship. This he believed breached 4.6 of the Code.

He therefore requested that the Commissioner should make an adjudication on the matters.

Commissioner's findings

After hearing the evidence the Commissioner was satisfied that there was an undisputed business relationship between the planning applicant and Hermitage AI, the company in which Mr Rea was a self-employed contractor.

The Commissioner referred to guidance to councillors which stated that:

'The requirements relating to disclosure and declaration of interests are complex. When deciding whether you are required to disclose or declare an interest, you must consider whether there may be a perception that your interest may influence how you will vote or decide on the matter. The key consideration is therefore not whether your decision would be influenced by your interest but whether a member of the public if he or she knew all the relevant facts would perceive that the interest is such that it would be likely to influence your decision.'

The Commissioner heard that Mr Rea had been a sales agent for Hermitage AI for approximately 25 years, and that both parties agreed that Hermitage AI might benefit by a 20% increase in purchases from the pig farm if the planning application was approved.

Based on the business relationship between Mr Rea, Hermitage AI and the planning applicant, the Commissioner was satisfied that a reasonable member of the public would perceive that the

interest would therefore be likely to influence Mr Rea's judgment.

She concluded that by failing to declare his pecuniary interest in the matter and to withdraw from the meeting, Mr Rea had failed to meet his obligations under paragraph 4.16(a) and had breached paragraphs 6.1 and 6.2 of the Code.

In her decision notice the Commissioner noted that the term 'pecuniary interest' is defined in legislation as business interests or wider financial interests such as investments and assets such as land and property. Pecuniary interests may be both direct and indirect. A direct pecuniary interest is one in which someone personally may benefit from a decision on the matter, while an indirect pecuniary interest is one where either someone's employer or partner in a legal partnership may benefit as a consequence of a decision.

She concluded that in speaking in favour of the planning application Mr Rea was using his position improperly to confer an advantage for the applicant and also Hermitage AI. The advantage to the applicant was the granting of planning permission, and the advantage to Hermitage AI was the potential increase in sales if planning permission was granted.

She stated that the word 'improperly' does not require malice or an intent to abuse a position, but can still include conduct which breaches the Code.

The Commissioner found that the councillor had not breached paragraph 4.6 of the Code.

Sanction

The Commissioner looked at a number of aggravating and mitigating factors before deciding on the most appropriate sanction.

As Mr Rea was an experienced councillor it could be said that he should have been aware of the provisions of the Code which he had signed, and should have sought additional advice if he had any uncertainty about how they applied to him.

However, Mr Rea did not receive any benefit at all from the granting of planning permission. Even in the event of the pig farm expanding and increasing its orders, he would receive no direct financial benefit at all.

Mr Rea also believed strongly that he acted in accordance with the understood council procedures at the time. Letters had been passed to the Commissioner from both the Council's Chief Executive and the Chair of the Planning Committee which stated that it was not the council's practice to ask for declarations of interests at pre-determination hearings.

This was an honestly held view (although subsequently determined by the Commissioner to be a mistaken one), that the action concerned did not constitute a failure to follow the provisions of the Code.

In addition, Mr Rea was a serving councillor for 34 years and received an MBE in 2011 for Community Service. He lost his seat at the 2019 local government elections and believed this was, at least in part, a result of the publicity around this case. This could be seen as a de facto sanction which has already arisen from this case.

However, the Commissioner held that to take no action in respect of the breaches of the Code would send a dangerous message to councillors about responsibilities under the rules around declarations of a pecuniary interest.

Having considered the particular facts and circumstances of this case, the Commissioner was satisfied that this was a case where censure was both appropriate, proportionate and reflective of the public interest.

Learning Points

Following her Adjudication into the above case, the Commissioner felt it was important to issue a number of learning points for the benefit of other councillors to consider. These were as follows:

1. The requirements relating to the declaration of pecuniary interests are a fundamental requirement of the Code and it is a councillor's personal responsibility to comply with the Code, regardless of the relevant Council practices and procedures.
2. The Code provides for separate and distinct obligations in respect of both registration and declaration of personal interests. Part 5 of the Code relates to the requirements on councillors to register their personal interests. However, having registered those interests under Part 6 of the Code, councillors have an ongoing obligation to comply with the requirements in relation to the disclosure and declaration of pecuniary (both direct and non-direct), and non – pecuniary interests.
3. The Commissioner highlighted to councillors generally that a failure to declare a pecuniary interest (direct or indirect) may result in a sanction of disqualification. This is a serious conduct matter which is underpinned by section 28 of the Local Government Act 1972. A breach of section 28 may in some cases be a criminal offence.

In this case the issue of non-pecuniary interest was relevant as the complainant questioned whether Mr Rea had a conflict of interest when he spoke at the pre-determination hearing.

4. Section 28 of the 1972 Act created a statutory obligation on councillors to declare a pecuniary interest, which is reflected in paragraph 6.1 of the Code. It was the clear intent of the Northern Ireland Assembly to retain this provision while providing for councillor's obligations in relation to declarations of pecuniary interest in the Code.

The retention of section 28 does not render the Code redundant. However, the Commissioner said that section 62(2) of the 2014 Act is confusing for councillors as it appears to provide a form of dispensation for councillors outside that provided for at Section 6 of the Code.

5. The English Court of Appeal case in *R v Liverpool City Council and Justice Keegan's decision in Rural Integrity* judicial review highlight that a failure to declare an interest is a serious matter, not only for councillors in regulating their conduct, but also as a failure in governance. Such a failure may result in a finding of maladministration by the relevant Ombudsman and also a judicial review challenge to that decision.

6. In this case the respondent, assisted by his legal representatives, was given credit for his co-operation throughout the process and the regard he showed for the standards regime. This invariably leads to consequential savings to the public purse, showing the importance of engaging and co-operating with both the investigation and adjudication process.
7. The Code is based on 12 principles of conduct (the Principles). These are intended to promote the highest standards of conduct for councillors. Section 53 (1) of the 2014 Act says that the Code must specify principles which are to govern the conduct of councillors. At paragraph 3.1 of the Code it states that 'As a councillor, you must observe these Principles'. The Principles are not merely aspirational in nature. Paragraph 3.2 of the Code states that 'The Rules of conduct set out in the Code (the Rules) are the specific application of the Principles. Your compliance with the Rules, which is required under the Code, will help you meet the high standards of conduct promoted by the Principles'.
8. Mr Rea was aggrieved by the fact that a number of councillors in attendance at the pre-determination hearing on 27 October 2016 had, in his view also breached the Code in that they remained at the hearing having declared an interest. Although the Commissioner made no finding in this regard, in light of this concern she requested that the Deputy Commissioner review his investigations procedures and set out clearly the criteria for the application of section 55(1)(b) of the 2014 Act. The latter provides for an investigation into other cases a councillor (or former councillor) has or may have failed to comply with the Code.

The Commissioner reminded councillors that their conduct is regulated by both the Rules and the Principles and councillors must have regard to both when considering their responsibilities under the Code.

Alderman ‘brought council into disrepute’ following drink-drive conviction

The Commissioner received complaints from two members of the public that Alderman Hussey (Derry City and Strabane District Council) had failed to comply with the Code of Conduct.

In September 2015 Alderman Hussey was involved in a road traffic accident in which he collided with a stationary vehicle and then left the scene without reporting the incident. Later that day he was interviewed by police officers at his home address and was arrested after failing a breathalyser test.

At the police station he provided an evidential sample of 78 micrograms (μg) of alcohol per 100 millilitres of breath. The legal limit is 35 μg .

At Belfast Magistrates Court in March 2016 the Alderman pleaded guilty and was convicted of driving with excess alcohol, driving without due care and attention, and failing to report an accident. He was sentenced to pay a fine, undertake community service and was disqualified from driving for five years.

Following his investigation, the Deputy Commissioner concluded that Alderman Hussey had failed to comply with paragraph 4.2 of the Code, which tells councillors that “You must not conduct yourself in a way which could reasonably be regarded as bringing your position as a councillor, or your Council, into disrepute.”

A preliminary Review meeting was held by the Acting Commissioner in June 2019, with the Director of Investigations (representing the Deputy Commissioner), the Alderman and his legal representative. At the meeting the Alderman accepted the content of the investigation report and that he had breached Paragraph 4.2 of the Code. In particular he accepted that he had brought his role as a councillor and the Council into disrepute.

The Acting Commissioner decided that in the circumstances it was appropriate for him, as permitted by the guidelines, to use his discretion to determine whether there had been a breach without the holding of an Adjudication Hearing.

Having established the facts and considered all of the available evidence before him, the Acting Commissioner found that the conduct of the Alderman was likely to diminish the trust and confidence the public placed in him as a councillor and his Council. He was therefore satisfied that he had breached paragraph 4.2 of the Code.

In considering a sanction the Acting Commissioner looked at the submissions by both parties, the Guidance on Sanctions document, the case law referred to in the Hearing and the character references provided by the Alderman.

The Deputy Commissioner said that in mitigation, the Alderman had no history of breaching the Code, and that he had demonstrated regret and remorse during the investigation and acknowledged that his conduct fell short of what is to be expected of an elected councillor. However these were set against the main aggravating factor that he had been convicted of drink driving three times, with the last occasion resulting in an injury to the other driver.

The Alderman's legal representative said that the Alderman had never tried to defend or justify his conduct, and denied that he had ever underestimated the seriousness of his actions.

The Acting Commissioner was not persuaded that the Alderman had demonstrated sufficient insight into the seriousness of his actions and its potential consequences for the public and the council. He was of the view that the aggravating factors in this case, including the fact that this was the councillor's third drink driving offence, substantially outweighed the mitigating factors.

He disqualified the Alderman from being a councillor for a period of fifteen months.

APPENDIX 1

LGES Complaints Statistics as at 31/3/20

Caseload	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15
Enquiries	32	130	44	11	8	4
Complaints ongoing from previous year	66	32	20	9	9	N/A
Written Complaints received in year	41	62	44	34	33	14
Total Complaints under assessment/ investigation in year	107	94	64	43	42	14

Closed Cases						
Closed at Initial Assessment stage "can we investigate?"	9	6	15	2	13	3
Closed at Assessment stage "should we investigate?"	13	7	9	15	16	2
Closed at Investigation stage -no breach	10	8	4	2	3	0
Closed by Alternative Action at investigation	10	1	1	2	0	0
Closed at Adjudication – no breach	0	0	0	0	0	0
Closed at Adjudication – alternative action	0	0	1	0	0	0
Closed at Adjudication - breach	3 ¹	6 ²	1	2	0	0
Complaint Withdrawn/discont'd	9	0	1	0	1	0
Total cases closed (A)	54	28	32	23	33	5
Live Cases						
Complaints to be Assessed	2	8	1	7	4	5
Complaints under Investigation	45	57	30	12	5	4
Cases referred for Adjudication	6 ³	1	1	1	0	0
Total live cases (B)	53	66	32	20	9	9
Total Cases in year (A+B)	107	94	64	43	42	14

1 3 complaints consolidated to 2 adjudications

2 6 complaints consolidated to 5 adjudications

3 6 complaints consolidated to 4 referrals

Written Complaints Received – by Basis of Complaint	2019 -20	2018 -19	2017 -18	2016 -17	2015 -16	2014 -15
Obligations as a Councillor (requirement to act lawfully and not bring council/position of councillor into disrepute)	10	21	24	19	23	13
Behaviour towards other people (requirement to show respect and consideration for others)	22	30	25	15	18	10
Use of Position	2	4	1	2	2	1
Disclosure of Information	4	5	1	7	1	3
Decision-making	5	7	1	1	0	3
Use of Council Resources	1	1	0	0	5	0
Registration of Interests	1	0	4	3	0	0
Disclosure & Declaration of Interests	6	10	9	6	0	0
Lobbying and access to Councillors	0	1	1	3	0	0
Planning matters	10	3	2	2	0	0
Total	61	82	68	58	49	30

greater than the number of complaints as some complaints allege more than one breach

Written Complaints Received - by Council	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	Total since 27/5/14
Antrim and Newtownabbey	14	9	3	6	2	2	36
Mid and East Antrim	3	3	1	2	2	3	14
Armagh, Banbridge and Craigavon	2	5	4	0	1	4	16
Belfast City	3	22	20	11	4	1	61
Causeway Coast and Glens	7	4	1	3	6	0	21
Derry City and Strabane	2	4	0	1	6	2	15
Fermanagh and Omagh	2	2	4	2	2	0	12
Mid Ulster	1	0	2	0	3	0	6
Newry, Mourne and Down	3	3	2	3	4	2	17
Ards and North Down	1	5	3	4	2	0	15
Lisburn and Castlereagh	3	5	4	2	1	0	15
Total	41	62	44	34	33	14	228

Appendix

LGES Funding and Expenditure

The functions of the Northern Ireland Local Government Commissioner for Standards include the conduct of investigations of alleged breaches of the Local Government Code of Conduct for Councillors, followed where appropriate by adjudications and High Court Appeals. Also included is the development and review of related guidance and procedures and the delivery of training and awareness sessions with Local Councils and the Councillor community. These functions are collectively termed Local Government Ethical Standards (LGES). LGES is funded from a separately identified portion of the overall annual budget for the Northern Ireland Public Services Ombudsman (NIPSO).

The LGES budget is proactively managed by NIPSO over the course of each financial year to ensure that any emerging funding pressures are identified and addressed. Similarly, where reduced requirements arise, under established arrangements with the Department for Communities (DfC), any such amounts are released back to DfC by NIPSO by means of a mutually agreed in-year transfer. This is in accordance with normal in-year financial monitoring procedures, after which DfC pay the released funding back to Local Councils.

Where applicable a final end of year adjustment is also returned directly to DfC. In all cases the amounts returned are made available for redeployment within Local Government, thus ensuring that any unspent amounts are able to be utilised effectively.

The following summarises the audited 2019-20 expenditure on the LGES function, compared to the preceding year, as reported in NIPSO's 2019-20 Annual Report and Accounts:

Local Government Ethical Standards (LGES)

(All £k)	2019-20	2018-19
Staff Costs	374	282
Other Administration Costs	51	155
Total Expenditure	425	437



Northern Ireland

Local Government
Commissioner for Standards

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