



COMMISSIONER'S ANNUAL REPORT

2020-2021

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EXECUTIVE SUMMARY

2020-2021

IN NUMBERS

48 Complaints

There were 48 complaints that councillors had breached the Code.



35 Councillors

The 48 complaints related to 35 councillors.

26 Complaints

were related to councillors' behaviour towards other people.



17 Complaints

were related to claims that councillors had not acted lawfully or had brought their position into disrepute.

23 Cases closed

A total of 23 cases were investigated and closed during the year.





**FOREWORD FROM
THE COMMISSIONER**

FOREWORD

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 may 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.

To emphasise the difference in these two roles, Section 1 of this Report focuses on the work of the Local Government Ethical Standards Directorate, while Section 2 focuses on the work of the Commissioner.

Like all other organisations our work in this reporting year was significantly disrupted by Covid-19. This was especially so when it came to holding Adjudication Hearings. Since 2016 Adjudication Hearings have been held 'in-person'. From March 2020 this became impossible, meaning that we had to look at new ways of delivering this vital function.

During the year we therefore spent a considerable amount of time developing procedures for conducting

Hearings over a 'virtual' platform, looking at ways of how they could be held in a way that was fair to everyone, without impacting on their quality or effectiveness. The outcome was our [Protocol for Remote Adjudications Hearings](#). This is a detailed document which informs all participants of their responsibilities during a hearing as well as providing advice on which technology to use, and what to expect before, during and after the Hearing.

Although we were unable to schedule any Hearings before the end of the year, I am pleased to report that in the current reporting year we have so far successfully held a number of virtual Hearings.

As we move forward during the year I am keen to engage with councillors, their representative organisations and Chief Executives of councils to ensure that there is a greater 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

March 2022



SECTION ONE

**LOCAL GOVERNMENT
ETHICAL STANDARDS
DIRECTORATE (LGES)**

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). 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 and two Senior Investigating Officers.

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.

Caseload

Ongoing cases and new complaints

At the start of the pandemic, in the first quarter of the reporting year (April – June 2020), the Directorate received no complaints about the conduct of councillors. However, the final number of complaints received for the year as a whole ended up being slightly higher than the previous year.

In 2020-21 the Investigations team received **48** complaints that councillors had breached the Code. This compares to **41** complaints received in 2019-20. The complaints related to **35** councillors.

At the start of the reporting year there were already **53** complaints ongoing from the previous year, meaning that the Investigations team's caseload for the year totalled **101** complaints. This compares to a total of **107** for 2019-20.

Complaint types

A total of **26** 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 (**17** 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 councillors' decision-making (**16** complaints), with the fourth largest being complaints about planning matters (**11**).

Cases closed

Covid-19 had a significant impact on the work of the LGES Directorate throughout the year. The pandemic placed major restrictions on the ability of the Investigations team to carry out interviews with complainants, councillors and witnesses. Time was needed to revise processes and procedures to enable interviews to take place remotely. Staff turnover and the move to home working also impacted on the team's performance over the year.

The team closed **23** cases during 2020-21. This compares to **54** the previous year. Of the 23 cases;

- **4** were closed at the Initial Assessment Stage, which looks at whether the complaint relates to conduct covered by the Code.
- **10** were closed at the Assessment Stage, which looks at whether there is evidence of conduct which, if proven, indicates a breach of the Code.
- **9** were closed at the Investigation Stage, where it was decided that there was no evidence of any failure to comply with the Code.

Performance

LGES' Key Performance Indicators state that the complainant and the complained-against councillor(s) will be notified within 4 weeks of receipt of a valid complaint of the decision whether to investigate. In 2020-21 this KPI was met in **84%** of complaints against a target of 85%.

LGES aims in 60% of the investigations it undertakes to complete an investigation within 40 weeks of receipt of a complaint. In 2020-21 this key performance indicator was met in **50%** of complaints investigated.

Statistical summary

Caseload	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15
Enquiries	21	32	130	44	11	8	4
Complaints ongoing from previous year	53	66	32	20	9	9	N/A
Written Complaints received in year	48	41	62	44	34	33	14
Total Complaints under assessment/investigation in year	101	107	94	64	43	42	14

Closed Cases							
Closed at Initial Assessment stage "can we investigate?"	4	9	6	15	2	13	3
Closed at Assessment stage "should we investigate?"	10	13	7	9	15	16	2
Closed at Investigation stage -no breach	9	10	8	4	2	3	0
Closed by Alternative Action at investigation	0	10	1	1	2	0	0
Closed at Adjudication - no breach	0	0	0	0	0	0	0
Closed at Adjudication - alternative action	0	0	0	1	0	0	0
Closed at Adjudication - breach	0	3 ¹	6 ²	1	2	0	0
Complaint Withdrawn/discont'd	0	9	0	1	0	1	0
Total closed cases (A)	23	54	28	32	23	33	5

1 3 complaints consolidated to 2 adjudications
2 6 complaints consolidated to 5 adjudications

Live cases	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15
Complaints to be Assessed	2	2	8	1	7	4	5
Complaints under Investigation	733	45	57	30	12	5	4
Cases referred for Adjudication	3	64	1	1	1	0	0
Total live cases (B)	78	53	66	32	20	9	9
Total Cases in year (A+B)	101	107	94	64	43	42	14

Written Complaints Received – by Basis of Complaint	2020-21	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)	17	10	21	24	19	23	13
Behaviour towards other people (requirement to show respect and consideration for others)	26	22	30	25	15	18	10
Use of Position	2	2	4	1	2	2	1
Disclosure of Information	6	4	5	1	7	1	3
Decision-making	16	5	7	1	1	0	3
Use of council resources	3	1	1	0	0	5	0
Registration of Interests	0	1	0	4	3	0	0
Disclosure & Declaration of Interests	3	6	10	9	6	0	0
Lobbying and access to councillors	0	0	1	1	3	0	0
Planning matters	11	10	3	2	2	0	0
Total	84	61	82	68	58	49	30

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

1 Includes 6 complaints at adjudication stage
 4 6 complaints consolidated to 4 referrals

Written Complaints Received - by Council	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	Total since 27/5/14
Antrim and Newtownabbey	4	14	9	3	6	2	2	40
Mid and East Antrim	6	3	3	1	2	2	3	20
Armagh, Banbridge and Craigavon	2	2	5	4	0	1	4	18
Belfast City	3	3	22	20	11	4	1	64
Causeway Coast and Glens	17	7	4	1	3	6	0	38
Derry City and Strabane	2	2	4	0	1	6	2	17
Fermanagh and Omagh	11	2	2	4	2	2	0	23
Mid Ulster	2	1	0	2	0	3	0	8
Newry, Mourne and Down	1	3	3	2	3	4	2	18
Ards and North Down	0	1	5	3	4	2	0	15
Lisburn and Castlereagh	0	3	5	4	2	1	0	15
Total	48	41	62	44	34	33	14	276

Case summaries

Closed at the Assessment stage

Councillor's comments did not amount to bullying

Complaint

A councillor complained about the comments made about him by another councillor during council business. He alleged that the comments were hurtful, personal and belittling. He also said that they constituted bullying and were an attempt to discredit him as an elected representative. The complainant felt that the councillor's actions breached the Code of Conduct.

Investigation

The investigation considered audio-recorded minutes from various Council meetings, plus an interview with a witness.

The Acting Deputy Commissioner looked at 4.13 of the Code, which states that:

You must:

- (a) show respect and consideration for others;
- (b) not use bullying behaviour or harass any person".

The Acting Deputy Commissioner also considered this investigation against the Respect principle, and undertook further consideration of Human Rights, as political speech is afforded enhanced protection in law on Article 10 of the European Convention on Human Rights.

The Commissioner's Guidance on paragraph 4.13(a) of the Code as set out at paragraphs 4.6.2 and 4.6.3 states the relevant parameters and thresholds to be applied when considering potential breaches of the Code.

The Guidance focuses on challenging political ideas and opinion, which are part of the political landscape, stating:

"As a councillor, your right to freedom of expression under Article 10 of the European Convention on Human Rights attracts enhanced protection when your comments are political in nature."

The Guidance also comments on the parameters and thresholds surrounding the issue of bullying and harassment in political discourse. It states that:

"The legitimate concerns that you may raise, as a councillor, in challenging decisions or policies when scrutinizing the performance of your council or other public bodies will not amount to bullying behaviour or harassment. You are entitled in your role as a councillor to challenge fellow councillors and officials on their stated views. However, if criticism is a personal attack on a councillor, a member of his/her family or another individual, or is of a highly offensive nature, this is likely to be considered bullying or harassment and therefore a breach of the Code".

Decision

After carefully considering the evidence and the Code of Conduct Guidance, the Acting Deputy Commissioner did not consider the councillor's comments to be gratuitous, offensive or egregious. They were clearly comments directed at the complainant as a political opponent, made in the context of political debate and within a political setting, challenging the councillor's ideas and opinions as part of the political landscape.

She therefore found that this was not a breach of the Code and concluded the investigation.

Councillor's Pride flag comments were within remit and made in a political context

Complaint

A complaint was made about the comments by a councillor on Facebook in relation to the flying of a Pride flag at a council building.

Assessment

In assessing the complaint, the Acting Deputy Commissioner relied on the supporting evidence and referred to paragraphs 4.12 and 4.13(a) of the Code of Conduct. These state:

4.12 '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 manner that is manifestly in conflict with the principles of the Code of Conduct.'

4.13(a) Councillors must show respect and consideration for others.

She also considered the Code of Conduct Guidance, and the Principles of Leadership, Promoting Good Relations and Respect Principles in making her decision.

Paragraph 4.6.2 of the Code of Conduct Guidance recognises the enhanced protection over freedom of expression across all levels of politics – including within local government. This is covered within Article 10 of the European Convention of Human Rights. The Guidance states that:

'It is unlikely that the lawful expression of such political views would lead to a finding of a breach of the Code for failing to show respect and consideration to others.'

It also states 'The LGES Directorate is unlikely to investigate a complaint about political comments unless the comments were unlawful or highly offensive'.

Decision

Having considered all guidance and evidence, the Acting Deputy Commissioner found that it was within the remit of the councillor to comment on the flying of the Pride flag. She also found that his comments were made in a political context and that they did not meet the threshold of proportionality for the investigation.

She did however recognise that the councillor's language on Facebook was of an unprofessional and uncourteous nature and directed the councillor to the [Commissioner's Guidance on the Use of Social Media](#).

She further reminded the councillor of his obligations citing paragraph 4.6.4 of the Code of Conduct Guidance which focuses on 'freedom of expression' and paragraph 4.6.5 which states that: 'You should bear in mind that rude and offensive conduct diminishes the public's opinion of, and trust and confidence in, its elected representatives. There may be occasions when members of the public place unreasonable demands on you. However, you should always treat members of the public politely and with courtesy, respect and consideration. This requirement applies not only when you are communicating with members of the public in person but also when communicating with them by telephone, letter, email or through your use of social media.'

Closed at the Investigation stage

Investigation into alleged improper influence of councillor on Planning Committee

Complaint

A member of a council complained that a fellow councillor had breached the Code of Conduct due to his improper influencing of planning applications. The complaint followed media coverage which highlighted an undercover meeting between journalists and the owner of a business. In this meeting the business owner is noted as saying that he was able to influence the councillor in question (as a member of a Planning Committee) by giving him restaurant vouchers.

Investigation

As part of the investigation process, the Acting Deputy Commissioner for Local Government Standards sourced all available evidence of the undercover meeting, which included both newspaper coverage and an audio recording of the undercover meeting.

During the audio recording, one of the journalists is recorded as saying *"Do you need to speak to any councillors or anything cause there's a guy [name disclosed] that's been suggested?"*

The business owner is then recorded as saying: *"I always look after him ... I always get him a wee voucher for [Restaurant 1] or [Restaurant 2], to take the Mrs out for a wee meal."*

Following the analysis of this evidence, an interview took place with the business owner. Enquiries were also made to the two named restaurants to determine if either had issued vouchers to anyone named in the investigation. Both could not provide any evidence for the time period in question.

Other information which was considered included minutes from the Planning Committee over a number of months. These found that there was no contact with the owner of the firm, nor any record or request from him to speak on behalf of any planning application or to view any planning application file.

Decision

After considering the complaint and supporting information, the Acting Deputy Commissioner found a lack of evidence to support a failure to comply with the Code of Conduct. The case was closed without any further action.

Accused councillor acted in 'personal capacity'

Complaint

A councillor complained that while he was maintaining an area of land he rented from the church, a fellow councillor approached him and accused him of damaging an adjacent property through his use of a weedkiller. He also said that the councillor acted aggressively and swore in front of his 12 year old granddaughter.

Investigation

The councillor was interviewed to determine whether his actions on the day were a breach of the Code of Conduct. The Deputy Commissioner considered paragraphs 2.7 of the Code, which states that councillors must observe the Code:

- (a) Whenever they conduct the business, or are present at a meeting of their council
- (b) Whenever they act, claim to act or give the impression they are acting in the role of a councillor; and
- (c) Whenever they act, claim to act or give the impression they are acting as a representative of their council.

Decision

The Acting Deputy Commissioner found that there was no clear evidence that the councillor was acting in his role or as a representative of his council at the time of the incident. In addition, the Acting Deputy Commissioner referred to paragraph 2.3 of the Code, which states that councillors are entitled to privacy in their personal lives and many of the provisions of the Code apply to them only when they are acting in their role as councillor or as a representative of their Council.

As this was a private matter between the two individuals, the investigation was closed.



SECTION TWO

**LOCAL GOVERNMENT
COMMISSIONER FOR
STANDARDS**

Profile of Commissioner and Acting Commissioners



Margaret Kelly
Commissioner

Margaret Kelly took up the post of Local Government Commissioner for Standards in August 2020. Margaret has worked extensively in the voluntary and community sector for over 30 years and gained a range of experience in leading and managing services, developing policy and working in partnership with the public sector.



Ian Gordon
Acting Commissioner

Ian Gordon OBE QPM LL.B is a retired Deputy Chief Constable of Tayside Police. Seconded to HM Inspectorate of Constabulary for 3 years, he was the lead police officer on the annual statutory inspection of five UK police forces.

Mr Gordon was a Convener for the Standards Commission for Scotland between 2010 and 2017 and led a focused improvement, to awareness of the Codes of Conduct, for elected members and Boards of Public Bodies.



Katrin Shaw
Acting Commissioner

Katrin was admitted as a Solicitor in 1996 and worked as a local government lawyer before she joined the Welsh Ombudsman's office as an Investigator in 2001.

Since then, Katrin has held managerial roles in the office and is now the Public Services Ombudsman for Wales's Chief Legal Adviser & Director of Investigations overseeing casework, including investigations under the ethical standards framework for local government members in Wales.

Procedure for Adjudications

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.

Hearings 2020-21

Because of the Covid-19 pandemic it was not possible to hold any in-person Adjudication Hearings during the period covered by this report (April 2020 – March 2021).

However, to ensure continuity of the Commissioner's statutory function to hold Adjudication Hearings during the course of the Covid-19 pandemic, we undertook a significant piece of work to establish procedures for holding Hearings 'virtually'. The result was '[The Commissioner's protocol for remote Adjudication Hearings](#)'. This guide offers practical advice to all those taking part in a virtual Hearing and on what to expect before, during and after the Hearing.

We anticipate that a number of Hearings will be held remotely during the year 2021-22.



APPENDIX

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. Collectively these functions are 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 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 must also be 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 fully and effectively.

The following summarises the audited 2020-21 expenditure on the LGES function, compared to the preceding year, as reported in NIPSO's 2020-21 Annual Report and Accounts:

Local Government Ethical Standards (LGES)

(All £k)	2020-21	2019-20
Staff Costs	374	374
Other Administration Costs	57	51
Total Expenditure	431	425



Northern Ireland

Local Government
Commissioner for **Standards**

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