

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

Introduction

1. The Local Government (Northern Ireland) Act 2014¹ (the 2014 Act) provides for the Northern Ireland Local Government Commissioner for Standards (the Commissioner) to make an adjudication to determine whether there has been a failure by a respondent councillor (a Respondent) to comply with the Northern Ireland Local Government Code of Conduct for Councillors (the Code). In the event that she determines 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 Respondent in such terms as the Commissioner thinks appropriate;
- (2) that the Commissioner should suspend or partially suspend the Respondent from being a councillor for such period as the Commissioner thinks appropriate but not exceeding one year or, if shorter, the remainder of the Respondent's term of office; or
- (3) that the Commissioner should disqualify the Respondent 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 an ascending order of seriousness. The Commissioner will also consider whether the Respondent has had any previous findings against him or her for breaches of the Code.

The Aims of the Sanction Decision

2. These guidelines will be considered by the Commissioner before she makes a decision on the sanction, if any, to be applied after she has made a determination that there has been a failure to comply with the Code. The guidelines are not prescriptive. The decision to be made in each case is a matter for the Commissioner and will, in a large part, depend on the particular facts and circumstances of the case.
3. The Commissioner's consideration of the sanction decision in any case will be based on her view that the principle purpose of sanctions is the preservation of public confidence in local government representatives. Her decisions on

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

sanctions will also aim to uphold the following objectives: the public interest in good administration; upholding and improving the standard of conduct expected of councillors; and the fostering of public confidence in the ethical standards regime introduced by the 2014 Act. Thus any sanction imposed will be justified in the wider public interest and will be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code, and to discourage similar conduct by others.

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 she 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 be varied so as to be more or less serious to take account of aggravating or mitigating factors that are present in a particular case. Examples (not exhaustive) of mitigating and aggravating factors are provided by way of illustration at Appendix A.
6. The Commissioner will take account of the actual consequences that have followed as a result of the Respondent's conduct, and she will also consider what the potential consequences might have been, even if these did not occur.
7. These guidelines do not include a scheme from which to calculate the length of disqualification or suspension that will apply to particular failures to comply with the Code.

No Action

8. 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 Respondent that, despite the lack of sanction, there is not likely to be any further failure to comply on the part of the Respondent.

Censure

9. 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. The Commissioner may consider censure to

be appropriate in circumstances where she 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 a suspension, or partial suspension, is not warranted. By way of illustration, this might include, for example, a deliberate but minor failure to comply, or a minor failure to comply where the Respondent fully accepts that the behaviour was inappropriate and/or has taken clear steps to mitigate the failure.

Partial Suspension

10. 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.

11. Factors which may justify a partial suspension include:

- a. That the Respondent's conduct has brought the office of 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 under the terms of the Local Government Act (Northern Ireland) 1972 (section 4(1)(cc))².
- b. The likelihood of further failures to comply with the Code by the Respondent.

12. The Commissioner may consider the option of partial suspension to be appropriate where there is a concern that the Respondent has difficulty in understanding or accepting the limitation placed on his or her actions by the Code in relation to a particular matter or area of activity, but that difficulty does not affect the Respondent's ability to act properly in relation to other matters or areas of activity. The Commissioner may take the view that suspending the Respondent 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) may provide an adequate

² The Local Government Act (NI) 1972 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.

safeguard against a future failure to comply, whilst leaving the Respondent able to make an effective contribution to the other work of the council.

13. Partial suspension may also be seen as an effective sanction in respect of a Respondent exercising a 'Position of Responsibility' as defined by section 6(1) of the 2014 Act. 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 Respondent in relation to certain matters or areas of activity.
14. The Commissioner may take into account that a Respondent who is partially suspended may be denied payment of allowances in respect of the responsibilities or duties from which the member is suspended during the period of suspension under the terms of his or her Council's Scheme for the Payment of Allowances to Councillors and Committee Members.

Suspension

15. 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.

16. Factors which may justify a suspension include:
 - a. That the Respondent's conduct has brought the office of 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 under the terms of the Local Government Act (Northern Ireland) 1972 (section 4(1)(cc)).
 - b. The likelihood of further failures to comply with the Code by the Respondent.
17. The Commissioner may take into account that a Respondent who is suspended may be denied payment of allowances during the period of suspension under the terms of his or her Council's Scheme for the Payment of Allowances to Councillors and Committee Members.

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

Disqualification

19. 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 Respondent having deliberately sought personal gain (for either herself or himself or some other person) at the public expense, by exploiting his or her membership of the council.
 - b. The Respondent having deliberately sought to misuse his or her position in order to disadvantage some other person.
 - c. The Respondent 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 Respondent. For example, if there were repeated failures to comply after a period of suspension then it is highly likely that in a future adjudication decision, the Commissioner faced with a decision about that further failure to comply will opt to disqualify the Respondent.
 - e. Misusing power within the council or public resources for political gain.
 - f. Misusing council resources.
 - g. Bringing the council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, she will consider whether the extent of the reputational damage to the council is so serious as to warrant a disqualification.
 - h. If the conduct giving rise to a failure to comply with the Code is such as to render the Respondent entirely unfit for public office, then disqualification is likely to be the appropriate sanction.
20. The duration of a period of disqualification is a matter for the Commissioner. A short period of disqualification may be appropriate where the Respondent is no longer a councillor in circumstances where, had he or she been a councillor, suspension would have been the likely sanction. This would ensure that the Respondent does not return to service as a councillor earlier than the period for which he or she would have been suspended had he or she not resigned.
21. 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 member concerned was suspended.

22. The Commissioner may take into account the economic impact on the councillor of disqualification, as he or she will lose any entitlement to allowances.
23. The Local Government (NI) Act 1972 imposes an automatic disqualification for five years on any councillor who is sentenced to a term of imprisonment of three months or more. 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 Respondent is unfit to hold public office and is unlikely to become fit over the next five years, then it may well 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

24. 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

25. 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 Respondent wholly or partially from being a councillor if: an investigation interim report finds prima facie evidence of a failure to comply with the Code; the failure is likely to lead to disqualification; and it is in the public interest to suspend or partially suspend the Respondent immediately.
26. Any interim suspension will be for not more than six months or (if shorter) the remainder of the Respondent'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

27. At an interim adjudication hearing, the Commissioner's determination may consider factors such as:
- a. The seriousness of the matters alleged against the Respondent.
 - b. The need to allow an investigation of the Respondent'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 Respondent may interfere with evidence or with witnesses relevant to the investigation 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 Respondent 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 Respondent.
 - 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 Respondent and that the Respondent has not yet had an opportunity to respond fully to the matters alleged against him or her.
 - f. The impact of any interim suspension on the Respondent.
28. Suspension or partial suspension of the Respondent by the Commissioner at an interim adjudication hearing should not be seen as a disciplinary measure against the Respondent.
29. In circumstances where the Commissioner eventually determines that a Respondent 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 Respondent into account in determining the sanction if any, to be imposed at the final Hearing.

Interim Adjudication Hearing – No Suspension or Partial Suspension

30. 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, she would be unlikely to disqualify the Respondent.
31. Even where it is likely that, if substantiated, disqualification would result, the Commissioner will be unlikely to impose an interim suspension or partial

suspension unless there is a compelling reason in the public interest for such an interim suspension to be imposed in advance of the completion of the investigation and a later adjudication Hearing.

Interim Adjudication Hearing – Suspension or Partial Suspension

32. Some allegations may be of such gravity as to lead to a loss of public confidence in the council if the Respondent were to remain in office whilst the allegations are being investigated. Suspension or partial suspension would be appropriate in such circumstances.
33. The Commissioner will at the interim adjudication hearing take into account whether 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 complete suspension of the Respondent will be an option chosen only if those aims cannot be met by the Commissioner either making no order for suspension, or making an order for partial suspension.
34. Partial suspension may be particularly appropriate where a Respondent exercises a 'Position of Responsibility' as defined by section 6(1) of the 2014 Act. 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 Respondent.

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 Respondent'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 Respondent 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 Respondent.
- 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 Respondent 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.
- 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 failure to follow the provisions of the Code.