

Protocol between the Local Government Commissioner for Standards and the Deputy Commissioner

1. Preamble

1.1 Part 9 of the Local Government Act (Northern Ireland) 2014¹ (the 2014 Act) introduced a new ethical standards framework for local government in Northern Ireland. The 2014 Act requires councillors to observe the Northern Ireland Local Government Code of Conduct for Councillors (the Code) and it gives the Northern Ireland Local Government Commissioner for Standards (the Commissioner), power to investigate and adjudicate on complaints of alleged breaches of the Code.

1.2 The purpose of an investigation, under section 55(5) of the 2014 Act, is to determine which of the following findings is appropriate:

- a) that there is no evidence of any failure to comply with the Code;
- b) that no action needs to be taken in respect of the matters that have been investigated; or
- c) that the Commissioner should make an adjudication on the matters that have been investigated.

2. Delegation of Authority by the Commissioner

2.1 In order to maintain an appropriate separation of the investigative and adjudication functions, the Commissioner has delegated² the authority to conduct investigations and report on the outcome of those investigations to the Deputy Commissioner and his staff in the Local Government Ethical Standards (LGES) Directorate.

2.2 The Commissioner undertakes the adjudication function and, following a public adjudication hearing (an “Adjudication Hearing”), where she finds that a Councillor has failed to comply with the Code, she determines which, if any, of the sanctions available under section 59 (3) of the 2014 Act will be applied. The Commissioner will appoint an independent legal assessor to provide legal advice and assistance prior to, during and following an Adjudication Hearing. The adjudication decision in each case, however, remains the Commissioner’s alone.

2.3 The 2014 Act also provides for the Commissioner to take action instead of, or in addition to, conducting an investigation in dealing with an alleged breach of the Code. Any recommendations as to such alternative action will be made by the Deputy Commissioner at his discretion in exercise of his delegated authority, having due regard to the Commissioner’s Alternative Action policy which is available at www.nipso.org.uk/nilgcs.

¹ As amended by Section 62 and Schedule 7 of the Public Services Ombudsman Act (NI) 2016 (the 2016 Act)

² Section 63(1) of the 2014 Act (Revised) extends the relevant provisions of the 2016 Act to the Commissioner’s consideration of local government ethical standards complaints: “Any function of the Ombudsman may be performed by any member of staff of the Ombudsman authorised by the Ombudsman for that purpose”

3. Complaints Assessment and Investigation

3.1 For the avoidance of doubt, the Commissioner has no role in the receipt, assessment or investigation of a complaint.

3.2 The Deputy Commissioner and his staff in the LGES Directorate undertake the receipt, assessment and investigation of written complaints of a failure to comply with the Code. Following an investigation, the Deputy Commissioner determines which of the findings provided for in section 55(5) of the 2014 Act will be made (see paragraph 1.2 above).

3.3 Where that finding is either that there is no evidence of any failure to comply with the Code or that no action needs to be taken, the Deputy Commissioner has discretion to decide whether or not to produce a report on the outcome of the investigation. If a report is produced, the Deputy Commissioner will provide copies to the Councillor and the Chief Executive of the Council concerned. The Deputy Commissioner will also inform the complainant of the outcome of the investigation. In addition, he will decide whether a summary of the investigation report will be publicised in accordance with section 57(1)(b) of the 2014 Act, having due regard to any criteria³ provided by the Commissioner for making such determinations.

3.4 Where the Deputy Commissioner considers that the investigation finding is likely to be that the Commissioner should adjudicate on the matter investigated, he will provide the councillor with a copy of his draft investigation report for comment prior to the conclusion of the investigation. The Deputy Commissioner will consider any comments the Councillor provides on the draft investigation report before finalising that report. If the Deputy Commissioner remains of the view that this is a matter on which the Commissioner should adjudicate, he will refer the matter to the Commissioner in accordance with the provisions of this Protocol. The Deputy Commissioner will maintain a register of all cases referred to the Commissioner for adjudication.

3.5 Further, by virtue of section 58 of the 2014 Act, the Deputy Commissioner may produce an interim report before the completion of an investigation where he finds that:

- a) there is prima facie evidence of a failure to comply with the Code;
- b) the nature of the failure is such that it is likely to lead to disqualification; and
- c) it is in the public interest to suspend or partially suspend the councillor immediately.

The Deputy Commissioner has discretion in relation to the contents of an Interim Report which may include a recommendation that the Councillor should be suspended or partially suspended for a period not exceeding six months. The Deputy Commissioner will refer any interim report to the Commissioner for adjudication.

4. Adjudications by the Commissioner

4.1 The 2014 Act is silent on the procedures to be followed in respect of an adjudication. In light of this, the Commissioner has exercised her discretion to

³ The Commissioner intends to publish her criteria for the publication of Summary Investigation Reports in late 2016.

provide adjudication procedures. The Commissioner may review and revise these procedures at her discretion.

4.2 The Commissioner may, where she considers it appropriate⁴, appoint a suitable person to adjudicate, for instance, where the Commissioner considers there is an actual or perceived conflict of interest.

4.3 The Commissioner will, in advance of a hearing, make a determination in relation to any relevant matter including:

- a) whether proceedings will be consolidated where two or more complaints have been received in relation to the same matter;
- b) whether there should be an adjudication determination without an Adjudication Hearing
- c) the timing and location of an Adjudication Hearing;
- d) whether any part of an Adjudication Hearing should be held in private; and
- e) whether any person should be required to attend as a witness at the Adjudication Hearing and/or to produce documents relevant to the adjudication.

4.4 The Commissioner will ensure any Adjudication Hearing is conducted lawfully, fairly and objectively, and in accordance with the Commissioner's Adjudication Procedures. The Commissioner will:

- a) provide for Adjudication Hearings to be recorded (electronically and/or by a stenographer) and for a transcript to be prepared;
- b) if she considers it desirable, make arrangements to have an advisor/expert witness enquire into any matter on her behalf and, if necessary, attend an Adjudication Hearing and give evidence;
- c) invite the Deputy Commissioner to make submissions in support of his investigation findings and to call witnesses;
- d) ensure the councillor or his/her representative may ask questions of all the witnesses and to make his/her own submissions, produce evidence in support of those submissions and to call his/her own witnesses;
- e) consider applications for adjournment or adjourn the hearing where she considers it appropriate to do so in any case;
- f) at her discretion, question any of the parties or witnesses; take advice from her legal assessor; and take expert advice on specific issues;
- g) deliberate in private on the submissions and evidence and make a decision whether or not the councillor has failed to comply with the Code;
- h) where she determines there has been a failure to comply with the Code, enquire of the Deputy Commissioner whether there have been previous breaches of the Code, or any mitigating or aggravating factors to be taken into account before she makes a decision as to the sanction, if any, to be imposed;
- i) where she determines there has been a failure to comply with the Code, consider any submissions by the Councillor or his representative as to the sanction, if any, to be imposed;
- j) prepare, with the assistance of the independent legal assessor, a written determination which will set out the details of any failure to comply with the Code; the sanction, if any, applied; and the considerations which determined

⁴ The 2016 Act, Schedule 1, article 14(2) provides that "any function of the ombudsman may be performed by any other person authorised by the Ombudsman for that purpose if (a) that other person is suitably qualified to do so, and (b) there are special circumstances which make it proper to do so. "

the level of sanction applied having regard to the Commissioner's Sanctions Guidelines;

- k) provide a notification of the decision to the councillor, the Chief Executive of the council, and the complainant. The notification will be published in newspapers circulating in the area of the council concerned. A copy will also be published on the Commissioner's website at www.nipso.org.uk/nilgcs.

4.5 The Commissioner will permit the Deputy Commissioner to attend or be represented at any Pre-Hearing Review. The Deputy Commissioner is entitled to attend any Adjudication Hearing, and to be represented at any hearing by a member of his staff or by counsel or by a solicitor. Subject to the discretion of the Commissioner, the Deputy Commissioner or his representative may at any Adjudication Hearing:

- a) make submissions, call witnesses and produce evidence in support of the findings in his investigation report;
- b) respond to submissions or evidence produced by the Councillor or his/her representative; and
- c) question those appearing before the Commissioner including the Councillor and his/her witnesses.

4.6 Where the Commissioner finds a failure to comply with the Code, the Deputy Commissioner may draw to the Commissioner's attention any matters that she may wish to take into account in reaching a decision on sanction, such as previous breaches of the Code or any mitigating or aggravating factors.

4.7 The Commissioner, having made her adjudication decision may make recommendations to a Council on any matter relating to the exercise of the Council's functions or the failure to observe the Code of Conduct. The Commissioner will send a copy of her recommendations to the Department for Communities, and may provide copies to other public bodies.

5. Commencement of the Protocol

5.1 The Protocol will come into effect on 26 July 2016.

6. Review of the Protocol

6.1 The Commissioner and the Deputy Commissioner agree to review the Protocol every 2 years.

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Commissioner for Standards

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for Standards