



Northern Ireland

Local Government Commissioner for Standards

LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 2014

In the matter of former Councillor Brian Duffin (Antrim and Newtownabbey Borough Council)

Case Reference C00324

Acting Local Government Commissioner: Mr Ian Gordon OBE QPM
Mr Michael Wilson, Solicitor and the Legal Assessor

Ms Michaela McAleer, Acting Deputy Commissioner presented the case.
Former Councillor Brian Duffy represented himself.

INTRODUCTION

The Northern Ireland Local Government Commissioner for Standards (the Commissioner), Mrs Margaret Kelly, has appointed Mr Ian Gordon as Acting Local Government Commissioner (Acting Commissioner) in relation to this Adjudication Hearing process. The role of the Acting Commissioner in this Hearing is defined by:

The Local Government Act (Northern Ireland) 2014 (the Act).

Due to the restrictions arising from Covid-19, this was a virtual hearing, held on the WebEx system and the proceedings were recorded by a stenographer.

By virtue of section 55(1)(a) of the Act, the Commissioner may investigate a written allegation made by any person that a Councillor (or former Councillor) has failed, or may have failed, to comply with the Code of Conduct for Councillors (the Code).

On 19 June 2018, Councillor Brian Duffin (the Respondent) was convicted at Antrim Magistrates' Court of sexually assaulting a teenage girl, which had taken place on 15 June 2016.

On 24 August 2018 a written complaint was received by the Northern Ireland Local Government Commissioner for Standards (the Commissioner) from Alderman Stephen Martin, in accordance with section 55 (1) (a) of the Act. The complaint alleged that the Respondent, an elected member of Antrim and Newtownabbey Borough Council (the Council), had failed to comply with the Code.

The Respondent's Declaration of Acceptance of Office is dated 4 June 2014 (Appendix E). By signing the declaration, the Respondent affirmed that he had read and would observe the Code.

The Respondent resigned as a Councillor on 30 November 2018.

INVESTIGATION

The complaint was investigated by the former Deputy Commissioner Mr Paul McFadden, who, in his Investigation Report dated 17 June 2019, reported that he had found evidence that would point to the Respondent having failed to comply with paragraph 4.2 of the Code:

"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".

The Deputy Commissioner submitted his investigation report to the Acting Commissioner in accordance with sections 55 and 56 of the 2014 Act. On 9 May 2019, the Acting Commissioner decided to hold an Adjudication Hearing in relation to the Respondent's conduct to determine whether or not he had failed to comply with the Code.

STAGE 1 - FINDINGS OF FACT and STAGE 2 - DETERMINATION ON BREACH OF THE CODE

At the outset, as preliminary matters, the Acting Commissioner addressed three issues relevant to evidence being led in the Hearing:

1. He referred to the non-automatic disqualification consequence of the sentence being suspended on appeal. The Deputy Commissioner in his Investigation Report at paragraph 27 had said:

"Councillor Duffin was sentenced to a period of four months' imprisonment, suspended for three years. It is my understanding that automatic disqualification therefore applies in this case."

The Acting Commissioner did not agree with that conclusion. The Local Government Act of Northern Ireland at Section 4(1)(cc) does not include the term 'suspended sentence' in its reasons for disqualification, whereas in the Local Government Acts for England, Scotland and Wales, the term was specifically included. In those Acts it reads:

"Has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months."

The Acting Commissioner was satisfied that the sentence imposed on the Respondent did not therefore invoke an automatic disqualification in this case.

2. The Acting Commissioner gave a warning to the Respondent about the relevance of evidence in the Hearing. He stated that he would not allow the Respondent to challenge the finding of guilt imposed on him by the Antrim Magistrates' Court, nor the outcomes of his subsequent appeals against conviction and sentence. On the advice of the Legal Assessor, the Acting Commissioner was satisfied that he had absolutely no authority to go behind those findings, which were made by courts of law and are established, and that he could take judicial notice of the outcome of the initial conviction and subsequent appeal.
3. The Acting Commissioner raised the aspect of confidentiality. He made it absolutely clear that the victim must not be named, and that warning extended to members of her family, or their addresses. It was imperative that there was no identification during the Hearing.

The Acting Deputy Commissioner had no preliminary matters to raise.

As a preliminary matter, the Respondent informed the Acting Commissioner that, in relation to his criminal case, he had appointed new solicitors. He had instructed them to raise legal actions of perjury against the complainant and her mother. The Acting Commissioner informed the Respondent that the hearing was focused purely on his conviction as it now stood. The Respondent stated that he accepted that position.

The Acting Deputy Commissioner emphasised that the criminal conviction in this case related to the same underlying facts that formed the basis of the former Deputy Commissioner's Investigation Report. She intended to proceed on the basis that it was not necessary for her to prove the facts behind the conviction. The former Deputy Commissioner had obtained a full summary of the circumstances of the offence and other evidence, such as witness statements, to consider the conduct to which the conviction related within the context of the Code.

The Acting Deputy Commissioner said Alderman Martin, in providing his complaint, also provided printouts of the following news reports from the BBC website, which he provided to support his complaint:

1. An article from 19th June 2018 entitled: "Councillor Brian Duffin guilty of teen sex assault".
2. An article from 7th August 2018 entitled: "Brian Duffin sentenced for sex assault".

The complaint that Alderman Martin made arose from the following facts:

1. On 19th June 2018, the Respondent was convicted of sexually assaulting a teenage girl on 15 June 2016.
2. On 7th August 2018 he was sentenced to four months' imprisonment, was placed on the Sex Offenders Register for a period of seven years and it was ordered that he be subject to a five-year Sexual Offences Prevention Order (SOPO).
3. The Respondent was released on bail pending an appeal against his conviction and sentence.

The former Deputy Commissioner had obtained a copy of the Respondent's declaration of acceptance of office which was dated 4 June 2014. By signing the declaration, the Respondent affirmed that he had read and would observe the Code.

The focus of the Deputy Commissioner's investigation was to ascertain if the Respondent may have failed to comply with paragraph 4.2 of the Code, which states:

"You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as a councillor or your council into disrepute."

This rule applies to councillors at all times, even when they were not acting in the role of councillor, therefore the Acting Deputy Commissioner was satisfied that the Code was in effect when the conduct complained of occurred.

To assist his investigation, the former Deputy Commissioner sought further evidence:

1. Belfast Magistrates' Court provided a certificate of conviction in respect of the Respondent's conviction.

2. The Respondent's trial and conviction attracted significant media interest and a selection of the media articles in respect of same can be found at pages 35 to 48 of the Hearing bundle.
3. The Respondent subsequently resigned from the Social Democratic and Labour Party pending the outcome of the court case and within the media articles it was noted that the SDLP, his former party, condemned his actions and called for him to resign his seat immediately.

On 11th October 2018 a statement of evidence was recorded from Mrs Jackie Dickson, the Chief Executive of the Council for Antrim and Newtownabbey regarding the complaint against the Respondent. It was notable that the Chief Executive was of the view that, as a result of his conviction the Respondent had brought his position as a councillor and the council into disrepute. Furthermore, the Acting Deputy Commissioner noted that within that statement her view that the Respondent's conviction had caused reputational damage to the council. It had impacted on public trust and confidence in the Council.

The Respondent lost his appeal against conviction on 28th November 2018 and on 29th November 2018 the Respondent notified Mrs Jackie Dickson, by letter, of his intention to resign as a councillor on 30th November 2018.

The Acting Deputy Commissioner said that concluded her submissions.

The Acting Commissioner invited submissions from the Respondent.

The Respondent referred to the written communications he had previously sent to the Acting Commissioner and stated that he did not want to waste time just going over those. He appreciated that it was a sentence of a Court, but he abided by the decision although he disputed it. He was now taking legal action against the individual.

The Respondent said that he appreciated the Acting Commissioner's situation that he was duty bound to uphold the Court's decision. He said he did not dispute the Court's decision; rather he disputed the evidence given to the Court.

Noting the submissions that he had just made, the Legal Assessor, asked the Respondent if he accepted, for the purpose of the Adjudication, that he was in breach of paragraph 4.2 of the Code? The Respondent replied "No".

The Legal Assessor asked the Respondent if he wished, therefore, to submit to the Acting Commissioner why he believed that he was not in breach of paragraph 4.2 of the Code?

The Respondent replied that he was not in breach of the Code because the individual, who made the complaint, perjured herself on eight counts to the Court and his legal team had not challenged any of the allegations made.

The Acting Commissioner asked the Respondent to confirm that he said that he did not breach the Code? The Respondent replied "Yes".

The Acting Commissioner adjourned to consider his determination on the findings of fact.

STAGE 1 – FINDINGS OF FACT

The Acting Commissioner said the evidential test for his consideration of findings of fact was on the balance of probabilities. He had taken note of the findings of fact from the Acting Deputy Commissioner, and he had concluded:

1. The Code was in effect when the conduct complained of occurred.
2. The Respondent signed an undertaking on 4th June 2014 that he had read and would observe the Local Government Code of Conduct for Councillors.
3. The Respondent served as a member of Antrim Council from 1st October 2013. He then served as a member of Antrim & Newtownabbey Council from 28th May 2014.
4. At the relevant time, 15th June 2016, the Respondent was a member of Antrim & Newtownabbey Council.
5. On 19th June 2018 the Respondent was convicted of sexually assaulting a teenage girl on 15th June 2016.
6. On 7th August 2018 he was sentenced to four months imprisonment, was placed on the Sex Offenders Register for a period of 7 years, and it was ordered that he be subject to a five-year Sexual Offences Prevention Order.
7. The Respondent was released on bail pending an Appeal against his conviction and sentence.
8. On 24th August 2018 a written complaint was received by the Northern Ireland Local Government Commissioner for Standards (the Commissioner) from Alderman Stephen Martin alleging that the Respondent had failed to comply with the Code.

9. The Respondent lost his Appeal against conviction on 2th8 November 2018.
10. The Respondent notified the Chief Executive on 29th November 2018 of his intention to resign as a councillor, with effect from 30th November 2018.
11. On 14th May 2019 the Respondent's sentence was reduced, on Appeal, to four months' imprisonment, suspended for three years. The SOPO was also removed. The Respondent is to remain on the Sex Offenders Register for 7 years.
12. The media reported the Respondent's original conviction and the outcome of his appeals against both sentence and conviction.

STAGE 2 – DETERMINATION ON BREACH OF THE CODE

The Acting Commissioner noted:

1. The Respondent was convicted on 19th June 2018 at Antrim Magistrates Court of an offence committed on 15th June 2016: sexually assaulting a teenage girl.
2. On 7th August 2018 he was sentenced to four months' imprisonment, placed on the Sex Offenders Register for a period of 7 years, and it was ordered that he be subject to a five-year Sexual Offences Prevention Order (SOPO).
3. On 14th May 2019 the Respondent's sentence, on appeal, was reduced to four months' imprisonment, suspended for three years. The SOPO was also removed. Councillor Duffin is to remain on the Sex Offenders Register for 7 years.
4. The Respondent's conduct, which resulted in a criminal conviction, had brought both his position as Councillor and his Council into disrepute.

Reasons for the Acting Commissioner's decision

In reaching his decision on the failure to comply with the Code, the Acting Commissioner had taken into account the Guidance for Councillors on the Code¹ and in particular paragraph 4.5.3 which states:

¹ Guidance for Councillors from the Northern Ireland Commissioner for Complaints

'As a Councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions – in either your public life or your private life – have the potential to adversely impact on your position as a Councillor or your Council. Dishonest and deceitful behaviour or conduct that results in a criminal conviction, such as a conviction for fraud or assault, even where such conduct occurs in your private life, could reasonably be regarded as bringing your position as councillor, or your Council, into disrepute'.

The Acting Commissioner also took into account 4.5.4 of the Guidance which states:

"When considering whether such conduct is such that it could reasonably be regarded as bringing your position, or your Council, into disrepute, I will consider:

- Whether that conduct is likely to diminish the trust and confidence the public places in your position as Councillor, or your Council, or is likely to result in damage to the reputation of either; and*
- Whether a member of the public – who knew all the relevant facts – would reasonably consider that conduct as having brought your position as Councillor, or your Council, into disrepute".*

The Acting Commissioner also took into account the statement of Ms Dixon, Chief Executive of the Council, where she stated:

"I believe that Councillor Duffin's conduct has brought his position as a councillor and the Council into disrepute as he has been convicted of this serious offence".

The Acting Commissioner was satisfied that the conduct of the Respondent, which resulted in a criminal conviction with attendant media publicity, was such that it was likely to diminish the trust and confidence the public placed in him as a Councillor and his Council. He had been referred to in media reports in this regard.

The Acting Commissioner found that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent's conduct was such that it brought his position as Councillor, and his Council, into disrepute.

The Acting Commissioner was satisfied, despite the denial by the Respondent, that the Respondent had breached Paragraph 4.2 of the Code:

"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".

STAGE 3 – SANCTION

The Acting Commissioner considered the submissions by both parties on sanction and the Guidance on Sanctions document. In summary, the respective submissions were as follows:

Submissions by the Deputy Commissioner:

Mitigating Factors:

1. The Respondent has no history of breaching the Code.
2. He was first elected as a member of Antrim Borough Council on 1st October 2013 and continued to serve as a councillor until his resignation on 30th November 2018. This provides some evidence of a previous record of good service and compliance with the Code.
3. He has cooperated with the Adjudication Hearing.

Aggravating Factors:

The Acting Deputy Commissioner said that an important factor in this case was the protection of the public interest in terms of public confidence in the institution of local government through those democratically elected to represent constituents. The legitimate aim being pursued by the Code was to provide for and secure the high standards required from elected councillors and in turn the purpose of sanction was preservation of confidence in local government representation.

The Acting Deputy Commissioner referred to the list of aggravating factors in the Commissioner's Guidance on Sanctions and drew on three factors:

1. The Respondent's actions had brought his role as a councillor and his council into disrepute where his conduct could reasonably be expected to attract significant public opprobrium.
2. The Respondent's conviction had caused reputational damage to the council and had impacted on public trust and confidence in the council.
3. There is some evidence that the Respondent had continued to deny the facts that formed the basis of his conviction and him seeking to unfairly blame other people.

The Acting Deputy Commissioner addressed the categories of decision for sanction. She noted paragraph 6 of the Sanction Guidelines:

"The Acting Commissioner will take account of the actual consequences that have followed as a result of the Respondent's conduct and will also consider what the potential consequences might have been even if these did not occur".

1. No action:

Was not a suitable outcome given the deliberate nature of the conduct, which gave rise to the Acting Commissioner's determination and breach of the Code. This was not an inadvertent failure, rather it was a conduct driven by the Respondent's own actions

2. Censure:

Given the weight of the public interest and the gravity of the conduct in question, as opposed to the minor failures envisaged under this outcome, it was highly questionable, in her view, whether censure could adequately cater for the public interest in the circumstances.

3. Partial suspension:

This provision was designed to meet circumstances in which a councillor's conduct was such that it was limited to a particular activity or section of council business from which the councillor could be easily extracted. The conduct in this case, which led to disrepute of the council and the office of councillor, is conduct of a pervasive nature and one which went to the very heart of public representation and the role of a councillor at every level on every matter.

4. Suspension:

Paragraph 18 of the Sanctions Guidelines states that suspension will not be considered if the Respondent has resigned or has not been re-elected to the council.

5. Disqualification:

Paragraph 19 of the Sanctions Guidelines states:

"Disqualification is the most severe of the options open to the Acting Commissioner."

It sets out the factors from (a) to (h) those circumstances in which disqualification may be an appropriate outcome. The Acting Deputy Commissioner considered the Respondent's conduct fell into:

(g) *"Bringing the council into disrepute. Where the Commissioner finds that the Respondent's conduct has brought the council into disrepute, he will consider whether the extent of reputational damage to the council is so serious as to warrant a disqualification."*

The Council had suffered reputational damage as a result of the Respondent's conduct.

(h) *"If the conduct giving rise to a failure to comply with the conduct is such as to render the Respondent entirely unfit for public office, then disqualification is the likely and appropriate sanction."*

Paragraph 3 of the Sanctions Guidelines states:

"The Commissioner's consideration of the sanction decision in any case will be based on her view. The principal purpose of sanction is the preservation of public confidence in local government representative. Her decisions on sanction were aimed to uphold the following objectives, the public interest in good administration; upholding and improving the standard of conduct expect of councillors and the fostering of public confidence in the ethical standards regime introduced by the 2014 Act."

The Acting Deputy Commissioner was of the view that a conviction for an offence of this nature would be viewed seriously by the public. It was of the type that would diminish rather than preserve confidence in local government representatives and the ethical standards regime where a councillor would be allowed to continue in his role as a councillor, or indeed, become a councillor for any period during which they were still registered on the Sex Offenders Register.

Other cases

The Acting Deputy Commissioner referenced the case of *Councillor Patrick Clarke* which was decided on 21st November 2016. Patrick Clarke had been convicted of criminal offences, one in February 2015 in respect of fraud that occurred in 2010, and one in September 2015 relating to a sexual assault that occurred in December 2014. During the investigation further criminal offences came to light. Sentences for the convictions included: a probation order for 10 months; pay compensation of £200; 7 months' imprisonment suspended for 3 years. He was disqualified for a period of 3 years.

This was in clear comparison to the sentence given to the Respondent and the accompanying time period to be spent on the Sex Offenders Register. It was the Acting Deputy Commissioner's submission that the Respondent's case was one which fell within the disqualification category and one which may attract a period of disqualification matching that, which was still required to be spent by him on the Sex Offenders Register.

There would be no loss of entitlement to allowances as these ceased upon the Respondent's resignation.

The Acting Deputy Commissioner concluded that there was an overriding public interest in this case and maintaining public confidence in local government. There was no doubt that a key element of this would be public knowledge of the sanction itself, along with an understanding of the factors that led to this outcome.

Submissions by the Respondent

The Respondent said that he had been found guilty of an assault based on perjured evidence and that and he was innocent. Those were the facts and those were the truths and that was his submission.

Conclusion on Sanction

The Acting Commissioner said he had listened carefully to the submissions. He acknowledged the mitigating factors raised by the Deputy Commissioner: that the Respondent did good service as a councillor; he resigned of his own accord; he had cooperated with the Investigation and the Hearing.

The Acting Commissioner dealt with sanction in ascending order of severity:

1. **No action:** The Acting Commissioner determined that to take no action in this case was not an appropriate response to the failure by the Respondent to comply with the Code because his conduct was a serious matter and not merely an 'inadvertent' failure to comply with the Code.
2. **Censure:** On the facts of this case, the Respondent's conduct, which had led to his convictions for a criminal offence of sexual assault could not be considered as a deliberate but nonetheless minor failure to comply with the Code. Therefore censure was not a suitable sanction.
3. **Partial suspension:** The Sanctions Guidelines indicated that partial suspension may be appropriate where the conduct in question was not sufficiently serious as to warrant disqualification. The Acting Commissioner considered that partial suspension was more likely to be appropriate where the conduct related to a particular activity or Council business from which the Councillor could be easily removed. He determined that the Respondent's conduct, which led to this breach of the Code, was serious. In this instance, however, it was not related to any particular area of Council business. The Acting Commissioner concluded that the sanction of partial suspension was not appropriate in this case.

4. **Suspension:** The Acting Commissioner took into account the Sanctions Guidelines which state that the sanction of suspension was to be considered where the conduct was not sufficiently serious to warrant disqualification, but the conduct was of a nature that:
- it is necessary to uphold public confidence in the standards regime and/or local democracy;
 - there is a need to reflect the severity of the matter; and
 - there is a need to make it understood that the conduct should not be repeated.

In view of the actual conduct itself, the seriousness of the criminal conduct, suspension was not an appropriate sanction for this breach of the Code.

5. **Disqualification:** This was the most severe of the options open to the Acting Commissioner. The Sanctions Guidelines, referred to by the Acting Deputy Commissioner, provided a list of Factors in a case which may lead to this option. The Acting Commissioner considered the following two Factors were relevant to this case:

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.

The Acting Commissioner considered that a contributory factor was that the Respondent was on the Sex Offenders Register for seven years and he believed that it was not in the public interest to exclude that fact from his decision. The Respondent continued to deny the lawfulness of his conviction. The Respondent's conduct made disqualification the appropriate sanction.

The Acting Commissioner had considered the objectives, set out in paragraph 3 of the Sanctions Guidelines, and found that the following objectives were relevant to determining sanction in this case:

- the public interest in good administration;

- upholding and improving the standard of conduct expected of councillors;
- the fostering of public confidence in the ethical standards regime introduced by the 2014 Act.

Any sanction imposed must also be justified in the wider public interest and should be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code or to discourage similar conduct by other Councillors.

The decision of the Acting Commissioner, made under Section 59(3)(c) of Part 9 of the Local Government Act (Northern Ireland) 2014, was to disqualify the Respondent for a period of 5 years from being, or becoming (whether by election or otherwise), a councillor and the disqualification was to have effect from 9th June 2021.

The Acting Commissioner took into account the economic impact on the Respondent in the loss of Council allowances but said that consideration was removed when the Respondent resigned from the Council.

6. LEAVE TO APPEAL

The Respondent may seek the permission of the High Court to appeal against a decision made by the Acting Commissioner, which must be made within 21 days of the date that the Respondent receives written notice of the Acting Commissioner's decision.

A handwritten signature in blue ink, appearing to read 'Ian A Gordon'.

Ian A Gordon

Acting NI Local Government Commissioner for Standards
30 June 2021