



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

**In the matter of former Councillor Ian Stevenson (Causeway Coast and Glens
Borough Council)**

Ref: C00356

**Decision of the Northern Ireland Local Government Commissioner for
Standards on Stages 1 and 2 of the Adjudication Hearing process by Mrs Katrin
Shaw, Acting Commissioner.**

The Complaint about former Councillor Ian Stevenson (the Respondent)

By virtue of section 55(1)(a) of the Local Government Act (NI) 2014 (2014 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 Local Government Code of Conduct for Councillors (the Code).

Two complaints were received. First, on 23 November 2018 the Chief Executive of Causeway Coast and Glens Borough referred to the Respondent's conviction on 22 November 2018 for a sexual assault which had occurred on 29 April 2017; and secondly, on 26 November 2018 a written complaint was received from a member of the public concerning the same matter.

The Investigation

The Director of Investigations commenced an investigation pursuant to section 55(1)(a) of the 2014 Act. The investigation report of the Director of Investigations, dated 22 December 2020, (the Investigation Report) addressed whether the Respondent had failed to comply with paragraph 4.2 of the Code, as follows:

Paragraph 4.2

'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.'

Following her investigation, the Director of Investigations submitted the Investigation Report to the Commissioner in accordance with sections 55 and 56 of the 2014 Act. In particular, in accordance with section 55(5) of the 2014 Act, the Director of Investigations found at paragraph [36] of the Investigation Report that there was evidence that the Respondent had failed to comply with paragraph 4.2 of the Code

and that the Commissioner should make an adjudication on the matters which were the subject of the investigation.

On 8 January 2021, the Acting Commissioner determined to hold an Adjudication Hearing in relation to the Respondent's conduct in order to determine whether or not he had failed to comply with the Code.

The Adjudication Procedures permit the Commissioner to determine whether or not there has been a breach of the Code without an Adjudication Hearing in certain circumstances. Paragraphs 25 to 27 of those procedures state as follows:

'Determination of Adjudication without an Adjudication Hearing

25. *The Commissioner has the discretion to adjudicate to determine whether there has been a breach without an Adjudication Hearing if she considers that she requires no further evidence and any one of the following circumstances apply:*
 - a. *If no reply is received in response to the notification provided to the Respondent within the specified time or any extension of time allowed by the Commissioner; or*
 - b. *If the Respondent states that he or she does not intend to attend or wish to be represented at the Adjudication Hearing; or*
 - c. *The Respondent does not dispute the contents of the investigation report.*
26. *If the Commissioner decides not to hold an Adjudication Hearing to determine whether there has been a breach she will send to the Respondent a list of the facts, together with any other supporting evidence, that she will take into account in reaching her decision. The Respondent will have 15 working days to submit any further written representations before the Commissioner makes her adjudication.*
27. *In circumstances where the Commissioner has made a determination as to breach without holding an Adjudication Hearing, she will, except in exceptional circumstances, hold an Adjudication Hearing to make a determination as to sanction. The procedures to be followed in regard to an Adjudication Hearing to determine sanction will, after the completion of any necessary preliminaries (such as an explanation of the order of proceedings and any opening remarks the Commissioner wishes to make) be those set out at paragraphs 67 to 68 below.'*

At a Pre-hearing review held on 2 March 2021, the Respondent accepted that paragraph 25c applied and consented to the Acting Commissioner's decision to use this expedited procedure.

By letter dated 4 March 2021, the Acting Commissioner confirmed to the Respondent that she had decided to use the expedited procedure and to determine whether or not there had been a breach of the Code by him without a public hearing as to the facts, and he was provided with a Statement of Facts and the other supporting evidence that

she would take into account in reaching her decision¹ in accordance with paragraph 26 above, and given the opportunity to comment and provide further submissions to the Acting Commissioner to consider in advance of the Adjudication Hearing. On 18 March 2021 the Respondent in an e-mail to the Acting Commissioner's Legal Officer proposed a limited number of amendments to the Statement of Facts 'for accuracy' which the Acting Commissioner accepted.

Findings of Fact

The following facts have been obtained from the Investigation Report.

- 1.1 The Respondent signed an undertaking on 7 June 2014 that he had read and would observe the Code.
- 1.2 The Respondent was first elected as a member of Ballymoney Borough Council on 11 June 2001 to serve as a councillor until 6 May 2019, but he was suspended as a Councillor on 25 March 2019 for the remainder of his term of office.
- 1.3 During the period 11 June 2001 to 6 May 2019, the Respondent served as Deputy Mayor of Ballymoney Borough Council on two occasions (2004/5 and 2013/14) and was Mayor of Ballymoney Borough Council in the year 2011/12.
- 1.4 At the relevant time, 29 April 2017, the Respondent was a member of Causeway Coast and Glens Borough Council.
- 1.5 On 22 November 2018 the Respondent was convicted of sexually assaulting a care assistant on 29 April 2017.
- 1.6 On 20 December 2018 the Respondent was sentenced to 220 hours' community service, and was placed on the Sex Offenders Register for a period of 5 years.
- 1.7 The Respondent lost his seat on Causeway Coast and Glens Borough Council at the Local Government elections on 2 May 2019.
- 1.8 The Respondent appealed his conviction and sentence.
- 1.9 The Respondent's appeal against his conviction and sentence was dismissed on 6 September 2019, and his original conviction and sentence were upheld.

¹ The other supporting evidence is the content of Appendices A to O (inclusive) of the Investigation Report.

Stage 2 of the Adjudication Hearing –The Acting Commissioner’s decision on whether there had been a breach of the Code

The Acting Commissioner, having established the facts and considered all of the available evidence before her, found as follows:

1. The Code applied to the Respondent.
2. The Respondent was convicted on 22 November 2018 of sexually assaulting a care assistant on 29 April 2017 and he was subsequently sentenced to 220 hours’ community service, and was placed on the Sex Offenders Register for a period of 5 years. The Respondent unsuccessfully appealed this conviction.
3. The Respondent accepted at interview with the Investigating Officer on 13 November 2019, that his conviction and the subsequent reporting of it, had damaged his reputation and that of the Council.²
4. In concluding her decision on the failure to comply with the Code, the Commissioner has taken into account the Guidance on the Code and in particular paragraph 4.5.3 which states:

‘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’.

5. The Acting Commissioner has also taken 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’.*

5. The Acting Commissioner is 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 places in

² Appendix O of the Investigation Report.

him as a Councillor and his Council. The Acting Commissioner noted that the Respondent had also accepted in his interview that his conviction and the subsequent reporting of it, had damaged his reputation and that of the Council.

6. The Acting Commissioner determined 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 therefore that the Respondent had breached paragraph 4.2 of the Code.

Stage 3 of the Adjudication – The Acting Commissioner's Decision on whether Action needs to be Taken

Having determined Stages 1 & 2 of the Adjudication without a hearing, in accordance with Paragraph 27 of the procedures for Adjudication outlined above, the Acting Commissioner convened a hearing on 28 June 2021 to make her determination as to sanction.

The Respondent was notified of the date of the hearing and had agreed that he and his representative could attend the hearing on 28 June. The Respondent engaged in the pre hearing adjudication process and requested that the hearing be conducted in private.

Prior to the hearing, the Respondent raised concerns about a number of matters and Requested that the hearing be adjourned. He was informed that the Acting Commissioner would deal with the issues he had raised at the commencement of the hearing.

Neither the Respondent nor his representative attended the hearing which was conducted remotely because of the Covid restrictions on 28 June. The 9.30am start time of the hearing was delayed for the Acting Commissioner's Legal Officer to contact the Respondent and his representative.

The Legal Officer emailed the Respondent (copying it to his Representative) at 9.50am as follows:

"Please be advised that the Acting Commissioner has directed that the hearing will commence at 10:00am. Please advise if you intend to attend. You can forward any comments you wish to be considered. The Acting Commissioner may proceed in your absence".

The Respondent replied at 10.03 as follows:

"As previously stated, I will not be present for the hearing. Indeed, I do not believe it should go ahead whilst my concerns are outstanding. I also add that I have not been allowed to question people I wished to or have my character witness present and feel even if things were satisfactory, that my papers could have arrived sooner."

The Acting Commissioner asked the Acting Deputy Commissioner to address her on whether it was appropriate to proceed with the hearing.

The Acting Deputy Commissioner said there had already been suitable flexibility shown in setting the date and time of the hearing with the Respondent and in terms of the fair and efficient handling of the adjudication she referred the Acting Commissioner to paragraphs 48 and 49 of the Adjudication Procedures which provide that if a respondent, or any other person, requested to be present, fails to attend or be represented at any adjudication hearing of which he has been notified the Acting Commissioner may adjudicate in that person's absence or may adjourn the adjudication hearing to another date. Paragraph 49 makes clear before adjudicating in the absence of a respondent the Acting Commissioner considers any written representations submitted by or on behalf of that person in response to the notice of the adjudication hearing.

The Acting Deputy Commissioner referred to her detailed written submissions on the issue of sanction and to the Respondent's detailed response to those submissions which were available in the hearing bundle. As the Respondent's representations were available the Acting Deputy Commissioner considered that the hearing could proceed in the Respondent's absence without having any detriment for the fair and efficient handling of the adjudication.

The Acting Commissioner's decision on whether to proceed with the hearing in the absence of the Respondent.

Where a party fails to attend an Adjudication Hearing the Adjudication Procedures state as follows:

48. *If a Respondent, or any other person requested to be present (except the Deputy Commissioner or her representative) fails to attend or be represented at an Adjudication Hearing of which he/she has been notified, the Commissioner may:*
 - a. *Adjudicate in that person's absence; or*
 - b. *Adjourn the Adjudication Hearing to another date, in which case the Commissioner will advise the Respondent, or any other person required to be present, accordingly.*
49. *Before adjudicating in the absence of a Respondent, the Commissioner will consider any written representations submitted by or on behalf of that person in response to the notice of the Adjudication Hearing. For this person, any reply shall be treated as a representation in writing.*

Whilst the Acting Commissioner was delivering her decision on whether the matter should proceed in the Respondent's absence, the Respondent's representative contacted the Acting Commissioner's Legal Officer to say that he could not access the link for the remote meeting. In view of this the hearing was adjourned for the Legal Officer to send a fresh remote meeting link to the Respondent's representative. When the hearing reconvened, the Legal Officer confirmed that there had been no further

contact from the Respondent's representative and that both the Representative and the Respondent had been provided with the Legal Officer's contact number and had not made contact with him.

The Acting Commissioner's decision on whether to proceed with the hearing in the Respondent's absence

The Acting Commissioner, having consulted with her Legal Assessor, carefully considered whether to proceed in the Respondent's absence and decided that it was appropriate for her to proceed with this Stage 3 Sanction Hearing.

The Acting Commissioner noted that in relation to the Respondent's e-mail to the Legal Officer, he did not outline any particular personal circumstances which would necessitate an adjournment of the hearing and the Acting Commissioner considered that the hearing bundle which the Respondent received the week before the hearing was merely a paginated version of documents and information he had received previously which contained no fresh information. She also noted the efforts which had been taken on the morning of the hearing to contact the Respondent.

The Acting Commissioner considered that the Respondent was aware of the proceedings; had actively engaged with the pre-hearing process up until that point and had been advised that she may decide to proceed with the hearing in his absence.

The Acting Commissioner said that she could conduct the hearing in accordance with the adjudication procedures; that she had available to her the various submissions the Respondent had made on the issue of sanction and his response to the Deputy Commissioner's submissions on sanction.

The Acting Commissioner said that she would deal with other issues the Respondent had raised as "preliminary matters" before moving on to consider her decision on sanction.

She stressed that she would make sure that the Respondent's interests were protected during the hearing that he was treated fairly in the process. The Respondent had the right to a fair hearing and the Acting Commissioner said she would take full consideration and have regard for the submissions he had made that she would protect his rights during the process.

The Acting Commissioner addressed the preliminary issues which had been raised by the Respondent

In relation to the issues which the Respondent raised prior to the hearing, the Acting Commissioner said:

- Issues relating to the conduct of the "interim hearing" which took place when the Respondent was suspended for a short period from the 19th of March until 6th May 2019 were an entirely separate matter which had no bearing on the Acting Commissioner's adjudication apart from the fact that the Sanctions Guidelines required her to take into account the fact that the Respondent had been suspended on an interim basis from the 19th of March until 16th May 2019.

- In relation to the Respondent's concerns about the number of referrals which may have been made to the Commissioner's office by the Chief Executive of the Council and the way in which the matter was drawn to the former Commissioner's attention by the Council's Chief Executive in November 2018, the Acting Commissioner noted that the Chief Executive's email to the former Commissioner which had stated that he felt that the Council's reputation may have been brought into disrepute and therefore, that the matter merited consideration in line with Section 4 of the Northern Ireland Code of Conduct for Councillors. The Acting Commissioner said it was important to note that she had issued her decision on Stages 1 and 2 of the procedure and found that the Respondent had breached the Code of Conduct. She said the Ethical Framework did not require any consideration or scrutiny of the way in which a complaint had been referred to the Commissioner, or the motives of a person bringing a complaint to the Commissioner because the Ethical Framework exists to maintain high standards in public life. This was not therefore a matter she needed to address.
- The Acting Commissioner had decided that it was unnecessary for the fair and proper determination of the matter to permit a character witness for the Respondent to provide evidence orally at the hearing. The Acting Commissioner said she had received the witness' statement of this individual together with other statements the Respondent had provided from his former work colleagues. The Acting Commissioner said she would consider that evidence. She noted the statement from the witness the Respondent had referred to related to her experience of the Respondent as a former work colleague. The Acting Commissioner said that as she was considering the issue of sanction in relation to the Respondent's public role as a councillor, having considered the witness' statement, the Acting Commissioner did not consider that there was any relevant oral evidence this particular witness could provide on the issue of whether the Respondent was fit to carry out his public role as a councillor.
- In relation to the Respondent's comments about media reporting of his case, the Acting Commissioner said that she considered that the media reporting was a relevant factor in so far as the Acting Commissioner's decision that the Respondent's conduct had brought his office as a councillor and the Council into disrepute as a consequence of his criminal conviction for sexual assault. She considered that this was also a matter which was relevant to issue of sanction and that she would consider this when she made her decision on what, if any, action to take.
- Finally, the Acting Commissioner said that the issue of whether the Respondent accepts that he breached the Code of Conduct and whether he is able to contest his conviction, is a matter which she would consider in her consideration of the issue of sanction.

The Acting Commissioner's decision on whether the hearing should be conducted in public or in private

The Acting Commissioner said she had considered very carefully the Respondent's reasons for holding the hearing in private. She said it was important at the outset to consider that the provisions of Section 56A (2) of the Local Government Act (NI) 2014 which

state that the '*hearing must be held in public save to the extent that the [Acting] Commissioner determines that this would not be in the public interest*'. The Acting Commissioner said she had taken into consideration that:

- the Respondent's conviction has already been widely reported in the public domain;
- the incident on 31 August 2019 which the Respondent had referred to in his application for the matter to be heard in private which he reported to the police had occurred nearly two years ago;
- the Respondent had continued to live in his local area since that time and that no evidence had been presented to the Acting Commissioner of any more recent concerns in that regard or of any current issue of concern.

The Acting Commissioner did not consider that there were any exceptional circumstances which would require her to hold the hearing in private contrary to the legislative presumption that the hearing should be held in public.

The Acting Commissioner decided therefore that the hearing would be held in public. She said however that if, during the course of the hearing there was a need for her to move into private session because any sensitive information needed to be considered, then her Legal Assessor would advise her if this was required.

She also said that she and her Legal Assessor would ensure that the hearing was conducted fairly and that the transcript of the hearing which would be available to members of the public on request to the NIPSO office after she published her decision would be appropriately redacted.

The Acting Commissioner's decision on sanction

At this point of the hearing, the Respondent's Representative contacted the Legal Officer to say that he was having internet problems. The hearing was adjourned to offer the Representative the option of joining the remote meeting on the telephone. When the hearing recommenced, the Legal Officer confirmed that he had sent further invitations to join the meeting which included the option of telephoning into the meeting at 10.55am. The Legal Officer informed the Representative that the hearing would recommence 11.10am.

The Acting Commissioner considered that ample opportunity had been given for the Respondent's Representative to access the meeting. In addition, and as already noted, both the Acting Deputy Commissioner and the Respondent had provided the Acting Commissioner with written submissions on the issue of sanction, and accordingly the Acting Commissioner was satisfied that the interests of the Respondent would not be prejudiced by continuing the hearing in his absence.

Submissions by the Acting Deputy Commissioner:

Mitigating factors:

1. The Respondent had no history of breaching the Code.
2. He was first elected as a member of Ballymoney Borough Council on 11th June 2001 and continued to serve as a councillor until 6th May 2019. During this time he held a number of positions in the Council. He served as Deputy Mayor of Ballymoney Borough Council on three occasions, that was in 2004, 2005 and 2013 and he was also Mayor of Ballymoney Borough Council in 2011. This provides some evidence of previous record of good service and compliance with the Code.
3. The Respondent cooperating with the Investigation process and he also attend the pre-hearing reviews and engaged with the adjudication process up until the point of the hearing.
4. A number of character references had been submitted by the Respondent.

Aggravating factors:

The Acting Deputy Commissioner said that an important factor in this case was undoubtedly 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 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 particular aggravating factors:

1. The Respondent's actions brought the role of councillor and his council into disrepute; the sexual offence for which the Respondent had been convicted fell squarely into the category of serious misconduct and conduct of this type could reasonably be expected to attract significant public opprobrium.
2. The evidence of the Chief Executive of Causeway Coast and Glens Borough Council was that the Respondent's conviction had brought his position as a councillor and the council into disrepute which in his view caused reputational damage to the Council and had negatively impacted on public trust and confidence in the council. Despite the alleged incident occurring in the Respondent's professional working life, media reporting of the Respondent's conviction (which formed the basis of one of the complaints), linked the Respondent's criminal conviction to his position as a Councillor prominently drawing the link to the attention of the public.
3. The Respondent has continued to deny the facts that formed the basis of his conviction and in view of the courts' decisions, both at first instance and on

appeal, this presented some evidence of the Respondent seeking to unfairly blame other people.

The Acting Deputy Commissioner noted that the Sanctions Guidelines said that the Acting Commissioner should take into account the actual consequences that have followed as a result of the Respondent's conduct and also consider what potential consequences might have been, even if these did not occur.

Of further relevance was paragraph 29 of the Sanctions Guidelines, which states:

"In circumstances where the Commissioner eventually determines that a respondent, who has been suspended or partially suspended at an interim adjudication hearing, has failed to comply with the Code, the Acting Commissioner will take the period of interim suspension applied to the respondent into account in determining the sanction, if any is to be imposed."

The Respondent was subject to an interim suspension from Tuesday, the 19th of March until the end of his term of office on 6th May 2019. Turning now specifically to the categories of sanction available at this stage.

The Acting Deputy Commissioner addressed the categories of decision for sanction.

No action: this was a suitable outcome given the deliberate nature of the conduct, which has given rise to the Acting Commissioner's determination under breach of the Code. This was not an inadvertent failure, rather this was conduct that was driven by the Respondent's own actions.

Censure: attention was drawn to the weight of the public interest in this case and the gravity of the conduct in question as opposed to the minor failures envisaged under this outcome, it was highly questionable whether censure would adequately cater for the public interest in the circumstances.

Partial suspension: the Respondent was not presently a councillor and this provision was designed to meet the 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 was easily extracted; rather than conduct of a pervasive nature and one which, therefore, goes to the very heart of public representation and the role of a councillor at every level and on every matter.

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."*

Disqualification: Paragraph 19 of the Sanctions Guidelines states that *"disqualification is the most severe of the options"* available.

It lists 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 that the principal purpose of sanction is the preservation of public confidence in local government representative. Her decisions on sanction 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."

The Acting Deputy Commissioner was of the view that conviction for an offence of this nature would be viewed seriously by the public and 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 where a councillor is no longer a councillor be allowed to become a councillor for any period during which they were still registered on the Sex Offenders Register.

The Acting Deputy Commissioner referred to the case of *Councillor Patrick Clarke*, whereby the Respondent, Patrick Clarke, had pleaded guilty to an offence contrary to Article 7(1) of the Sexual Offences (Northern Ireland) Order 2008 and for which he was sentenced to a probation order for 10 months and ordered to pay compensation of £200. This was one of a number of offences of varying natures and types that Patrick Clarke pleaded guilty to. The decision in that case was to disqualify the Respondent for a total period of three years.

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 the time which was still required to be spent by him on the Sex Offenders Register.

Whilst this would preclude the Respondent from running in the next elections, which are scheduled for May 2023, for the reasons set out by the Acting Deputy Commissioner, she did not consider that the period of disqualification would have a disproportionate effect on the Respondent as any lesser period would not, in her view, meet the public interest in this case.

There would be loss of entitlement to allowances as they ceased upon the Respondent losing his seat in the May 2019 Elections.

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 a key element of this would be public knowledge of the sanction itself, alongside an understanding of the factors that led to it.

Submissions by the Respondent

The Respondent had provided written submissions on sanction, in which he responded to the Acting Deputy Commissioner's written submissions and gave his view on sanction. He considered that he was entitled to legally contest his conviction without this having a negative impact on his position. He also outlined the financial, emotional and personal hardship which he had suffered as a result of his conviction and the negative publicity.

The Acting Commissioner's decision on Sanction

The Acting Commissioner said she had carefully considered the Guidelines on Sanctions and the submissions from both parties before reaching her decision.

She noted the mitigating factors which have been outlined by the Acting Deputy Commissioner and by the Respondent which included the fact that the Respondent had no previous history of breaching the Code of Conduct, his good record of service and compliance with the Code, that he had co-operated with the investigation and during the adjudication process up to the point of the hearing and the impact his conviction had had on him, his reputation and his family. The Acting Commissioner also said she had considered the character evidence submitted by the Respondent's former work colleagues and, as required by the Sanctions Guidelines, she had considered the fact that the Respondent was subject to an interim suspension for the period from 19 March until 6 May 2019.

However, Acting Commissioner said that the serious nature of the conviction and the aggravating factors which have been outlined, substantially outweigh the mitigating factors in this case. The purpose of the sanctions regime was to uphold the public interest and standards of conduct in local government representatives, to foster public confidence in the Ethical Standards Regime and the standards of those who serve in public life in local government.

The Acting Commissioner said that the Respondent had brought his role of councillor and the council into disrepute. She considered that his conviction for sexual assault clearly fell within the category of serious misconduct. The evidence of disrepute to the Council provided by the Council's Chief Executive and the media reporting of his conviction had drawn attention to the Respondent's position as a councillor. The Acting Commissioner considered that knowledge of the Respondent's conviction was likely to have diminished public confidence and trust in the Council.

The Respondent had continued to deny the facts and the basis of his conviction despite his conviction and his appeal against conviction and sentence having been dismissed by the court. Whilst private citizens may challenge criminal convictions, the Acting Commissioner was entitled to take into account the Respondent's ongoing denial of the outcome of the criminal process in coming to her decision on sanction.

The Acting Commissioner considered that a sanction of "no action" or of "censure" was not appropriate because this was not an inadvertent failure or a minor breach of the Code of Conduct.

As the Respondent was no longer a councillor, the sanction of suspension or partial suspension could not be considered. In any event, the Acting Commissioner was of the view that the seriousness of his conduct and the public interest was such that suspension would not have been appropriate in this case.

The Acting Commissioner said that the factors she had outlined met the criteria set out in the Sanction Guidelines for the most serious form of sanction of disqualification. She considered that his conviction, conduct and placement on that Sex Offenders Register for the period of 5 years would be viewed very seriously by the public. The Respondent's conduct, conviction and finding that he had brought his office and the Council into disrepute, would diminish trust in local government representatives and in the Ethical Standards Regime were he to become a councillor again while still being placed on the Sex Offenders Register.

The Acting Commissioner said she was conscious that the purpose of this sanctions regime was not to punish the councillor. Also, whilst a considerable period of time has been taken to bring this matter to a conclusion, in part attributable to Covid, the Acting Commissioner said her decision on sanction would have been no different had the matter been capable of being determined sooner.

Given the seriousness of the Respondent's conduct she considered that a disqualification of four years was a proportionate and appropriate sanction in this case. As well as the *Clarke* case, which had been outlined by the Deputy Commissioner, the Acting Commissioner considered the very recently determined case of a former Councillor, *Brian Duffin*, where a five-year disqualification was imposed for a convicted sex offender. Whilst the *Duffin* case merited a five-year disqualification, the Acting Commissioner noted that he was placed on the Sex Offenders Register for a period of seven years. In contrast the Respondent was placed on the Sex Offenders Register for a period of five years.

The Acting Commissioner considered that this case merited a disqualification of four years. However, she considered that it was appropriate to give credit to the Respondent for the period of interim suspension he had already served and taking this and the mitigating factors into account, the Acting Commissioner determined that the appropriate period of disqualification would be one that would run from 28 June 2021 until 30 April 2025

The Acting Commissioner said that whilst the length of this disqualification would preclude the Respondent from standing in the next Local Government Elections scheduled in May 2023, she considered that this was required in the public interest

given his conviction and placement on the Sex Offenders Register. The reputational damage to his position as a councillor and the Council as a result of his conduct and conviction, was very serious. In view of this she did not consider that the period of disqualification would have a disproportionate effect on the Respondent, because any less a period of disqualification would not have met the public interest and the overriding purpose of the Ethical Standards Regime of upholding standards of conduct and fostering public confidence in local government and the standards regime itself.

The decision of the Acting Commissioner, made under Section 59(3)© of part 9 of the Local Government Act (Northern Ireland) 2014, was to disqualify the Respondent until 30th April 2025.

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.



Katrin Shaw
NI Local Government Acting Commissioner for Standards
28 June 2021