



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

In the matter of Councillor Thomas Hogg (Antrim and Newtownabbey Borough Council).

Decision of the Northern Ireland Local Government Commissioner for Standards following the public Adjudication Hearing held at Progressive House, Wellington Place, Belfast, on Monday 28 January 2019.

Adjudication Hearing: Mrs Marie Anderson, Northern Ireland Local Government Commissioner for Standards (the Commissioner).

The Deputy Commissioner Mr Paul McFadden attended the Adjudication Hearing, for the purposes of the Commissioner making a determination as to whether or not the Respondent had breached the Northern Ireland Local Government Code of Conduct (the Code). The Respondent, Councillor Thomas Hogg, was not present at the hearing on 28 January 2019 and neither was he represented.

Complaint about Councillor Thomas Hogg

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 Code. The Deputy Commissioner had received two complaints from members of the public about the Respondent's conduct. In the early hours of 29 April 2018 he was stopped by police, breathalysed and subsequently convicted at Belfast Magistrates Court on 25 May 2018 of the offence of driving with excess alcohol in his breath, contrary to Article 16 (1)(a) of the Road Traffic (NI) Order 1995. Councillor Hogg pleaded guilty to this offence and was sentenced to a twelve month driving ban with the option of a three month reduction following the completion of a drink driving awareness course. A fine of £250 was also imposed together with an offender levy of £15.

The Investigation

The Deputy Commissioner commenced an investigation pursuant to section 55(1)(a) of the 2014 Act. The investigation report of the Deputy Commissioner dated 18 December 2018 (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 way which could reasonably be regarded as bringing your position as a Councillor, or your Council, into disrepute'.

Following his investigation, the Deputy Commissioner 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 Deputy Commissioner found at paragraph 39 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 4 January 2019, the 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. In earlier correspondence with the Investigating Officer, Councillor Hogg had requested that the Adjudication Hearing be expedited. 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.'

As referred to at paragraph 27 above, an Adjudication Hearing to determine sanction must be held, unless exceptional circumstances apply. The Commissioner determined that there were no such circumstances and she decided to use the expedited procedure provided for under paragraph 25 above in this case. That is because Councillor Hogg had accepted the Deputy Commissioner's investigation report and also accepted that he had breached the Code.

By letter dated 4 January 2019, the Commissioner's Legal Officer confirmed to the Respondent that the Commissioner 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. Councillor Hogg was provided with a Statement of Facts in accordance with paragraph 26 above, and given the opportunity to comment and provide further submissions to the Commissioner to consider in advance of the Adjudication Hearing. On 24 January 2019 Councillor Hogg confirmed in an e-mail to the Commissioner's Legal Officer that he accepted the Statement of Facts.

Findings of Fact

The Commissioner relied on the following facts:

1. Councillor Hogg was elected as a Democratic Unionist Party (DUP) Councillor on 22 May 2014 to Antrim & Newtownabbey Borough Council
2. He signed a Declaration of Office on 30 May 2014 in which he agreed to observe the Northern Ireland Local Government Code of Conduct for Councillors. A copy of this Declaration can be found at Appendix A of the Deputy Commissioner's investigation report.
3. The Code was in effect when the conduct complained of occurred.
4. At approximately 0140 hours on 29 April 2018 Councillor Hogg was stopped by police on the Crumlin Road, Belfast. He failed a breathalyser test and was arrested on suspicion of driving with excess alcohol in breath.
5. Councillor Hogg was arrested and taken to Musgrave Street custody suite where he provided an evidential sample of 91 micrograms of alcohol per 100 millilitres of

breath (μg), the legal limit being 35 μg . He was charged with driving with excess alcohol in breath.

6. On 19 May 2018, the North Belfast News reported on Councillor Hogg being charged with drink-driving in an article entitled '*DUP Councillor is charged with drink-driving*'.
7. On 25 May 2018 Councillor Hogg was convicted of driving a vehicle with excess alcohol contrary to Article 16(1)(a) of the Road Traffic (Northern Ireland) Order 1995. He pleaded guilty and was sentenced to a 12 month driving ban and a £250 fine (plus £15 Offender Levy) with the option of a 3 month reduction in the period of disqualification following completion of a drink driving awareness course.
8. Councillor Hogg attended the drink driving awareness course.
9. On 29 May 2018 Councillor Hogg was suspended from his political party, the DUP.
10. On 31 May 2018, the Antrim Guardian reported on Councillor Hogg's conviction in an article entitled '*Banned, fined, suspended – for being 2.5 times over the limit*'.
11. On 31 May and 7 June 2018 the Deputy Commissioner received complaints from two members of the public alleging that Councillor Hogg had, or may have, failed to comply with the Code.
12. Councillor Hogg was informed on 5 and 11 June 2018 that an investigation into the complaints by the Deputy Commissioner was commencing.
13. On 8 June 2018, Councillor Hogg emailed the Office of the Local Government Commissioner for Standards confirming that he had been convicted of a drink-driving offence on 25 May 2018.
14. On 9 August 2018 Councillor Hogg sent a further email to the Office of the Local Government Commissioner for Standards stating that he 'did not intend to dispute the Commissioner's jurisdiction to determine the matter' and he accepted that his conduct 'had infringed the Code'.
15. On 24 August 2018 Councillor Hogg was interviewed by Local Government Ethical Standards Senior Investigating Officers Mr Robert Bannon and Mr Jeffrey McWatters. At the interview he provided character references.
16. On 11 October 2018, Mrs Jacqui Dixon, Chief Executive of Antrim & Newtownabbey Borough Council, provided a statement of evidence regarding the complaints made against Councillor Hogg. In this statement she stated that she did not consider that Councillor Hogg's conviction brought the Council into disrepute or impacted on the operation of the Council.

17. Mrs Dixon also stated that Councillor Hogg was to become Chair of the Council's Policy and Governance Committee, but he 'missed out' on this role following his suspension from the DUP. She also stated that Councillor Hogg's suspension meant that he could no longer sit on the Planning Committee.
18. The Council confirmed to the Deputy Commissioner that Councillor Hogg does not currently sit on any Council Committee or hold any Positions of Responsibility.
19. On 10 December 2018, Councillor Hogg emailed Mr Robert Bannon, Senior Investigating Officer, advising that he did not have any comment to make regarding the factual accuracy of the Deputy Commissioner's draft investigation report.

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

The Respondent did not attend the Stage 2 Adjudication Hearing on 28 January 2019, neither was he represented. At the commencement of Stage 2, the Commissioner sought oral submissions from the Deputy Commissioner as to whether she could proceed with the hearing in Councillor Hogg's absence. The Deputy Commissioner provided submissions pursuant to paragraph 48 of the Adjudication Procedures. Councillor Hogg had corresponded with the Commissioner's Legal Officer by e-mail on 24 January 2019 to explain why he would be unavailable to attend the Adjudication Hearing. In that e-mail he stated that he had sought legal advice and did not intend to be legally represented and he also stated that he was content to proceed on the basis of his written representations. On the advice of her Legal Assessor, the Commissioner determined in light of these submissions and in light of email correspondence from Councillor Hogg, that it was appropriate to proceed with the Adjudication Hearing in the Respondent's absence.

The 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, as he had accepted in an email to the Investigating Officer on 9 August 2018 and at interview on 24 August 2018, that he had failed to comply with paragraph 4(2) of the Code in relation to his conduct on 29 April 2018 which states that:

'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'.

Reasons for the Commissioner's Decision

The Commissioner finds as follows:

1. The Respondent was convicted on 25 May 2018 at Belfast Magistrates Court of an offence contrary to article 16(1)(a) of the Road Traffic (Northern Ireland) Order 1995, of driving with excess alcohol in his blood on 29 April 2018.
2. The Respondent's conduct, which resulted in a criminal conviction, had brought both his position as Councillor and his Council into disrepute, and the Respondent had accepted that his conduct had infringed the Code.
3. 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.'

4. The 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 Commissioner is satisfied that the conduct of the Respondent, which resulted in a criminal conviction with attendant media publicity, is such that it is likely to diminish the trust and confidence the public places in him as a Councillor and his Council. The Commissioner was referred to media reports in this regard which had been provided by the complainants in this case. The Respondent had also accepted in his interview that his role as a Councillor and the Council was brought into disrepute by his actions.
6. The Commissioner considered carefully the evidence of Jacqui Dixon, Chief Executive of the Council, that Councillor Hogg's conduct had not brought the Council into disrepute and had not impacted on the operation of the Council. The Commissioner was mindful of the media publicity surrounding Councillor Hogg's conduct and conviction. The Commissioner also took into account the fact that the

complaints in this case had been made by two members of the public who were concerned about the Councillor's conduct. The Commissioner also took into account paragraphs 4.5.3 and 4.5.4 of the Guidance on the Code.

7. The 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 Commissioner was satisfied therefore that Councillor Hogg had breached paragraph 4.2 of the Code.

Stage 3 Sanctions Hearing

Having found that the Respondent had breached paragraph 4.2 of the Code, the Commissioner invited the Deputy Commissioner to make submissions on sanction in this case.

Submissions on Sanction

At the hearing on 28 January 2019, the Deputy Commissioner referred in his oral submissions to all sanctions available to the Commissioner in ascending order of severity and he noted also that the list of Mitigating and Aggravating Factors outlined in the Sanctions Guidelines were not exhaustive. The Deputy Commissioner stated that the question of sanction is a matter for the Commissioner in the exercise of her discretion. However, in summary he submitted as follows:

- (i) **No Action** - For the Commissioner to take to take no action would not be appropriate in this case.
- (ii) **Censure** - Given the weight of the public interest and the seriousness of the conduct under consideration, which was not a minor or inadvertent failure to comply with the Code, censure would be not a suitable outcome to the proceedings.
- (iii) **Partial Suspension** - Partial suspension was not an applicable sanction as the Respondent's conduct did not arise from a particular activity or section of Council business from which the Respondent could easily be extracted. In this matter driving with excess alcohol was conduct of a pervasive nature and one which therefore went to the heart of public representation at every level and on every matter.
- (v) **Suspension** - The breach by the Respondent was within the 'disrepute' provisions of the Code which was identified within the Sanctions Guidelines as being in the suspension category. The Deputy Commissioner referred to the judgment of Mrs Justice Keegan in the case of Councillor Patrick Brown¹ in which she held that a

¹ Brown's (Patrick) Application [2018] NIQB 62

Councillor's conduct in driving a vehicle with excess alcohol warranted immediate suspension. The Deputy Commissioner, relying on the High Court judgment in the case of Councillor Patrick Brown, submitted that suspension would represent an appropriate sanction in this case as the case was similar in many respects with that case. The Deputy Commissioner also addressed the issue of the impact of suspension on the Councillor in relation to the availability of allowances and expenses and noted that the Council's current Scheme of Allowances was silent as to whether they would be payable. The Deputy Commissioner confirmed that this Scheme of Allowances is currently subject to review by the Council. For the purposes of this case however, the question of allowances payable to a Councillor in the event of suspension from office, was a matter for the Council's discretion.

- (vi) **Disqualification** – Disqualification is the most severe sanction available to the Commissioner. However the extent of the reputational damage in this case was not such as to warrant disqualification. He also referred to the potential unintended impact on the Respondent, depending on the length of sanction, given the local government elections in May 2019.

In addition, the Deputy Commissioner submitted as follows:

Mitigating Factors:

- (a) A history of compliance with the Code
- (b) Co-operation with the Deputy Commissioner's investigation
- (c) Recognition by the Respondent of a failure to follow the Code.
- (d) There was unlikely to be any further failure to comply with the Code on the part of the Respondent.
- (f) Previous good service and character as supported by the character references provided.
- (h) Compliance with the Code since the events giving rise to the adjudication.

Aggravating Factors:

- (a) Councillor Hogg has held the position of Mayor, a senior position in the Council on two occasions.
- (b) The deliberate nature of the Respondent's conduct as he had driven knowing he had a substantial amount of alcohol taken.
- (c) Councillor Hogg's alcohol reading was 2.5 times over the limit.
- (d) The Respondent's actions had brought the Council into disrepute.

- (e) The danger of drink driving was a societal issue and his conduct was inappropriate as an elected representative.
- (f) The negative public perception of driving with excess alcohol and public disapproval of such conduct.
- (g) The safety risks to himself, members of the public and his potential passenger.

The Deputy Commissioner, having submitted that he was not advocating for a particular sanction (as this was a matter for the Commissioner to determine), considered an appropriate sanction was suspension in this case. The Commissioner invited submissions on the impact of suspension on the electorate and the Deputy Commissioner advised that Councillor Hogg had been suspended by his party, the DUP, indefinitely.

The Commissioner also enquired as to the appropriate length of any suspension and asked that the Deputy Commissioner address her on the impact of section 59(5) of the 2014 Act, which states as follows:

'Where the Commissioner makes such a decision as is mentioned in subsection (3)(b), the Commissioner must suspend or partially suspend the person from being a councillor for such period as the Commissioner thinks appropriate but not exceeding one year or, if shorter, the remainder of the person's term of office.'

The Commissioner's Decision on Sanction

The Commissioner considered the Sanctions Guidelines and the submissions of both the Deputy Commissioner and previous submissions of the Respondent (including the statement sent to the Commissioner's Legal Officer on 11 January 2019 and the character references provided by him).

The Commissioner dealt with sanction in ascending order of severity.

No Action

The Commissioner determined that to take no action in this case is 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.

Censure

On the facts of this case, the Respondent's conduct, which had led to his conviction for a criminal offence of driving with excess alcohol, could not be considered as a deliberate but nonetheless minor failure to comply with the Code, and therefore censure was not a suitable sanction.

Partial Suspension

The Sanctions Guidelines indicate that partial suspension may be appropriate where the conduct in question is not sufficiently serious as to warrant disqualification but is of a nature that:

- (a) it is necessary to uphold public confidence in the standards required of local democracy;
- (b) there is a need to reflect the severity of the matter; and
- (c) there is a need to make it understood that the conduct should not be repeated.

The Commissioner accepted the submission of the Deputy Commissioner that partial suspension is more likely to be appropriate where the conduct relates to a particular activity or Council business from which the Councillor could be easily removed. The Commissioner determined that the Respondent's conduct that led to a breach of the Code in this matter was serious and that a drink driving conviction relates to personal conduct but was not related to any particular area of Council business. The Commissioner concluded that the sanction of partial suspension was not appropriate in this case.

Disqualification

Before determining if suspension was the appropriate sanction in this case the Commissioner considered whether the Respondent's conduct was sufficiently serious to warrant disqualification. Having regard to paragraph 19(g) of the Sanctions Guidelines and noting the mitigating and aggravating factors referred to below, the Commissioner determined that, although his actions had brought the Council into disrepute, there was no evidence that the extent of the reputational damage was so serious as to warrant a disqualification.

Suspension

The Commissioner has taken into account the Sanctions Guidelines which state that the sanction of suspension is to be considered where the conduct is not sufficiently serious to warrant disqualification but the conduct is of a nature that:

- (a) it is necessary to uphold public confidence in the standards regime and on local democracy;
- (b) there is a need to reflect the severity of the matter; and
- (c) there is a need to make it understood that the conduct should not be repeated.

The Commissioner has considered the applicability of the objectives identified in paragraph 3 of the Sanction Guidelines and considered that the following objectives are relevant to the consideration of sanction in this case:

- (i) the public interest in good administration
- (ii) upholding and improving the standard of conduct expected of councillors;
- (iii) 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 Commissioner referred to Appendix A of the Sanction Guidelines, which set out a non-exhaustive list of mitigating and aggravating factors in determining the appropriate sanction. The Commissioner also considered the submissions on this issue received orally from the Deputy Commissioner. In her consideration the Commissioner is entitled to take into account not only the actual consequences that have followed as a result of the Respondent's conduct but also what the potential consequences might have been, even if they did not in fact occur.

The Commissioner's Conclusions on Mitigating/Aggravating Factors

Mitigating Factors:

1. The Respondent has a previous record of good service and compliance with the Code.
3. There was an apology and a recognition of his failure to follow the Code.
4. There has been co-operation in the investigation and the adjudication and his facilitation of an expedited Adjudication Hearing with consequent saving to the public purse.
5. There has been no further incidence of non-compliance.
6. The positive character references submitted on behalf of the Respondent.
7. The candid manner in which the Respondent had engaged in the investigation process.
8. The Respondent had demonstrated insight into his wrongdoing.

Aggravating Factors:

1. The serious nature of the conduct leading to a breach of the Code, given the nature of the criminal offence of driving with excess alcohol.

2. The Respondent's actions had brought himself and the Council into disrepute.
3. The consequences that may have followed as a result of the Respondent's decision to drive with excess alcohol in his blood including physical harm to himself, the endangerment of his potential passenger and other road users.
4. The conduct of Councillor Hogg was a deliberate act.

Taking all of this into account the Commissioner has concluded that a period of suspension is the appropriate sanction.

Period of Suspension

While the duration of suspension is a matter for the Commissioner, the guidelines state a suspension of less than a month is unlikely to have such an effect. The Commissioner noted that the Respondent accepted, as she has found, that he failed to comply with paragraph 4.2 of the Code. The failure in question relates to the offence committed by the Respondent of driving with excess alcohol in contravention of Article 16(1)(a) of the Road Traffic (Northern Ireland) Order 1995.

The Commissioner carefully considered the impact of suspension on the Respondent and on the electorate in relation to him being able to conduct business on its behalf. However, in weighing the public interest against the particular private interests of the Respondent the Commissioner is satisfied that suspension is an appropriate and proportionate sanction. In terms of the economic impact on the Respondent, the Commissioner has noted that whether he would continue to be paid allowances during suspension was a matter for the Council's discretion

The impact on the electorate in relation to the lack of the Respondent's voice at Council meetings has also been considered. The Commissioner noted that, for the duration of the suspension, a suspended councillor cannot participate, formally or informally, in any council business or any activities associated with his position as a councillor, including the business of any council meetings, committees or sub-committees. However, during his suspension he would be excluded from all activities associated with the position of Councillor, he remained entitled to speak with constituents as a fellow member of the public.

Case Law

In the case of *Patrick Heesom v Public Services Ombudsman for Wales and the Welsh Ministers*², in considering the approach to sanction by the Adjudicating Panel for Wales, Mr Justice Higginbottom referred to the need to ensure that a sanction is in line with other similar cases.

² [2014] EWHC 1504 Admin

In the case of *Councillor Westerman*³ the Adjudication Panel for Wales imposed a sanction of six months suspension for a breach of the Welsh Code for the criminal offence of cultivation and possession of cannabis (for personal use) contrary to the Misuse of Drugs Act 1971, which was a second offence.

In the case of Patrick Brown⁴ Mrs Justice Keegan held that drink driving “*can have devastating consequences and is frowned upon by our society*”.

She also held in that case that it “*should make clear that anyone convicted of a similar offence will face immediate suspension*” and commented that:

“The length of the suspension (six months) is mid-range.”

Taking all of this into account, Councillor Hogg’s co-operation with the investigation and his request for and facilitation of an expedited adjudication process, the Commissioner considers a suspension period of five months is both appropriate and proportionate in this case. The suspension will commence on 4 February 2019. However, having regard to the effect of section 59(5) of the 2014 Act and section 11(2) of the Electoral Law Act (Northern Ireland) 1962 (1962 Act), the Commissioner noted that the suspension will by operation of law cease to have effect on 6 May 2019. That is because Councillor Hogg’s term of office ends four days after the local government elections on 2 May 2019, as provided for by the 1962 Act.

Leave to Appeal

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

Other Matters

The Commissioner would like to take this opportunity to highlight that when considering an appropriate period of suspension or disqualification, the Commissioner will take into account the Councillor’s co-operation with both the investigation and adjudication (with the consequential saving to the public purse), as in this case.

Marie Anderson
NI Local Government Commissioner for Standards
31 January 2019

³ Tribunal Reference Number: APW/002/2003/CT

⁴ Brown’s (Patrick) Application [2018] NIQB 62