



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

In the matter of Councillor Patrick Brown (Newry, Mourne and Down District Council).

Decision of the Northern Ireland Local Government Commissioner for Standards following the public adjudication hearing held at Progressive House, Wellington Place, Belfast, on 17 April 2018 and 26 April 2018.

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

The Deputy Commissioner Mr Paul McFadden presented his investigation report. The Respondent, Councillor Patrick Brown, was present at the hearing on 17 April 2018 and was not represented. The Respondent was not present at the reconvened hearing on 26 April 2018 and was not represented at that hearing.

Self-Referral by Councillor Patrick Brown

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 Northern Ireland Local Government Code of Conduct for Councillors (the Code). The Respondent referred himself for investigation into his conduct in the early hours of 5 March 2017 when he was stopped by police, breathalysed and subsequently convicted at Belfast Magistrates on 10 July 2017 of the offence of driving with excess alcohol in his blood, contrary to Article 16 (1)(a) of the Road Traffic (NI) Order 1995. Councillor Brown 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 2 March 2018 (the Investigation Report) addressed whether the Respondent had failed to comply with the following parts of the Code:

1. *Paragraph 4.1(a)*

'Councillors hold public office under the law and must act lawfully'

Public Duty Principle

'You have a duty to uphold the law and to act on all occasions in accordance with the law'.

2. *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 42 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 13 March 2018, 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. The Respondent provided detailed submissions in response to the Commissioner's decision to hold an Adjudication Hearing. (These included submissions on sanction and a number of character references, which were subsequently considered at the Sanctions part of the Adjudication Hearing).

Preliminary Review Meeting

A preliminary review meeting was held by the Commissioner on 11 April 2018 and the Deputy Commissioner and Respondent were in attendance. The Respondent was not represented at that meeting. At the review meeting, the Commissioner issued a number of directions to the parties for further submissions in advance of the hearing. At the review meeting, the Respondent accepted the content of the Investigation Report and also that he had breached paragraph 4.2 of the Code. In particular he accepted that he had brought his role as Councillor, and the Council, into disrepute.

Evidence Presented at the Adjudication Hearing

The Respondent is an elected Alliance member of Newry, Mourne and Down District Council (the Council). At the preliminary review meeting the Respondent had accepted the findings of fact in the Investigation Report. The Respondent admitted that he had breached paragraph 4.2 of the Code.

Notwithstanding the Respondent's acceptance of the Investigation Report and that he had failed to comply with paragraph 4.2 of the Code, the Commissioner alone must decide whether or not any person has failed to comply with the Code.

The evidential test for findings of fact at an Adjudication Hearing is on the 'Balance of Probabilities'. Although there was no express challenge to the presentation of facts on behalf of the Deputy Commissioner, the Deputy Commissioner must still satisfy the Commissioner on the balance of probabilities of the facts contended for (including evidence to assist the Commissioner in deciding on sanction).

Findings of Fact

The Commissioner relied on

1. The Investigation Report and supporting documentation.
2. Police and related witness statements relating to the incident on 5 March 2017, and the Respondent's Certificate of Conviction dated 10 July 2017.
3. The Response Form submitted by the Respondent dated 2 April 2018 and his supporting statement.
4. A submission by the Respondent dated 11 April 2018 in relation to the passenger and character references.

The Commissioner found the following facts:

1. The Respondent is a member of the Council.
2. He signed a Declaration of Office on 3 June 2014 in which he agreed to observe the Code.
3. The Code applied to the Respondent.
4. The Respondent had attended a celebration with Alliance party colleagues on the evening of 4 March 2018 following the outcome of the Northern Ireland Assembly elections on 2 March 2017.
5. The Respondent was not present in his capacity as a Councillor.

6. On 5 March 2017 at 04.15 a police constable observed the Respondent and a female pillion passenger on a motorcycle in the vicinity of Ballynahatty Road, Belfast.
7. The Respondent was stopped by police and breathalysed and at 04.25 was then arrested for driving with excess alcohol in his breath and he was cautioned. He was then taken to Musgrave Street Police Station where following a further breath test he elected to give a blood sample.
8. On 12 June 2017 the Respondent was charged with the offence of driving with excess alcohol in his blood and he was released on police bail to attend Belfast Magistrates Court on 10 July 2017.
9. At Belfast Magistrates Court on 10 July 2017 the Respondent pleaded guilty and was convicted of driving a motor vehicle with excess alcohol in his blood contrary to article 16(1)(a) of the Road Traffic (Northern Ireland) Order 1995. He received a fine of £250 and an offender levy of £15. The Respondent was disqualified from driving for one year with the option of a three month reduction following the completion of a drink driving awareness course. The Respondent completed this course on 9 November 2017 and his period of disqualification was reduced to nine months.
10. The media had reported the Respondent's conviction.
11. This was a first offence and the Respondent has had no further offences.
12. The Respondent was accompanied by a pillion passenger on 5 March 2017 who was a member of the Alliance Party and who had also attended the social event which had begun the previous evening.
13. As a result of his conviction, the Respondent attended a disciplinary hearing of the Alliance Party on 3 October 2017 and was given a temporary suspension of three months until 31 December 2017. By letter to the Respondent dated 3 October 2017, communicating the Party's sanction, the Alliance Party President (Gerardine Mulvenna) strongly recommended that the Respondent refer himself to the Commissioner so that a determination could be made as to whether there was a breach of the Code. In that letter, the Party President stated that if the Respondent did not decide to refer himself, it would be incumbent on others to do so in pursuance of paragraph 4.4 of the Code, which states as follows:

'You must report, either through your Council's own reporting procedure or directly to the proper authority, any conduct by any other person which you believe involves, or is likely to involve, criminal behaviour'.

On 31 December 2017 the temporary suspension by the Party was lifted.

14. By letter of 4 November 2017, received on 6 November 2017, the Respondent wrote to the Commissioner's office (the self-referral) setting out the details of his conviction and confirming that he had contacted a number of drink driving charities to express an interest in 'supporting them' and in a personal attempt to 'make right' his wrongdoing. The Respondent has since become a donor to Brake, the UK's leading road safety charity.

The Commissioner's Decision on whether there had been a breach of the Code

The Commissioner, having established the facts and considered all of the available evidence including the oral and written submissions provided both by the Deputy Commissioner and Respondent, has found as follows:

1. The Code applied to the Respondent.
2. The Respondent had not failed to comply with paragraph 4(1)(a) of the Code as the Respondent was not acting in his capacity as a Councillor in relation to his conduct on 5 March 2017.
3. The Respondent, as he had admitted, had failed to comply with paragraph 4(2) of the Code in relation to his conduct on 5 March 2017 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 Decision

The Commissioner finds as follows:

1. The Respondent was convicted on 10 July 2017 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 5 March 2017.
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 the consequence of the failings in his conduct.
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 by the Deputy Commissioner to media reports in this regard. The Respondent had also accepted that his role as a Councillor and the Council was brought into disrepute by his actions.

6. 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.

Adjournment of Hearing on 17 April 2018

Having found that the Respondent had breached paragraph 4.2 of the Code , the Commissioner adjourned the Adjudication Hearing until 26 April 2018 at 2.00pm for the purpose of submissions on the appropriate sanction (if any) in this case. The Respondent indicated that he would not attend but that he might send a representative to attend the sanctions hearing on his behalf. By email of 25 April 2018, Councillor Brown confirmed he would not attend the adjourned hearing and would not be represented.

Submissions on Sanction

On Tuesday 24 April 2018, the Deputy Commissioner submitted a skeleton argument in relation to the issue of sanction, together with a note of details of a telephone statement from the Chief Executive of the Council concerning two contacts with the Council in January 2018 in respect of the Respondent’s conviction. These documents were forwarded to the Respondent on the same day (24 April 2018) by email. The Respondent responded on 25 April 2018 stating that he had no further statement to make on the issue of sanction and referred to his statement of 2 April 2018.

Adjourned Adjudication Hearing (26 April 2018)

The Commissioner initially sought submissions from the Deputy Commissioner relating to whether the hearing could proceed in the Respondent's absence. The Commissioner noted paragraph 48 of the adjudication procedures permitting an adjudication in a councillor's absence. In this case, the Respondent had stated in his email of 25 April 2018 that he did not intend to attend and was content for the adjourned hearing to proceed. In view of this the Commissioner considered that it would not be disproportionate to the Respondent's rights to continue with the hearing and that it was appropriate therefore to proceed in the Respondent's absence.

The Deputy Commissioner referred to his written submissions on sanctions in which he had considered all available sanctions in ascending order and noted that the question of sanction is a matter for the Commissioner. In summary he submitted as follows:

- (i) **No Action** - 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 an inadvertent failure, 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. This would represent an 'adequate outcome' to the proceedings. The Deputy Commissioner also noted the impact of suspension on the Respondent in terms of the non-payment of allowances and the electorate being without his representation.
- (vi) **Disqualification** - Disqualification, which is the most severe sanction, was an option in this case. However the extent of the reputational damage in this case was difficult to quantify. The Deputy Commissioner also addressed the issue of the impact on the Councillor and electorate of suspension or disqualification. He also referred to the potential unintended impact, depending on the length of sanction, given the May 2019 local government elections.

In addition, the Deputy Commissioner additionally submitted as follows:

Mitigating Factors:

- (a) Self-reporting of the failure to comply 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) Apology to affected persons.
- (e) There was unlikely to be any further failure to comply with the Code on the part of the Respondent.
- (f) Previous good service and compliance with the Code.
- (g) Willingness to rectify the effects of his failure to comply with the Code.
- (h) Compliance with the Code since the events giving rise to the adjudication.

Aggravating Factors:

- (a) The deliberate nature of the Respondent's conduct.
- (b) The Respondent's actions had brought the Council into disrepute.
- (c) The dangers of drink driving.
- (d) The negative public perception of drink driving.

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 sanction lay somewhere between suspension and disqualification. In this case.

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 of 2 April 2018 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 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 objective of upholding and improving the standard of conduct expected of Councillors and in fostering the public confidence in Local Government and in the Ethical Standards Regime that was introduced by the 2014 Act is relevant to the consideration of sanction in this case. Any sanction imposed must 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 others.

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 and or in writing from the parties. 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. Although there is no mandatory requirement in the 2014 Act for a Councillor to refer his/her conduct for investigation (a self-referral), the Respondent had referred himself to the Office for investigation and the Deputy Commissioner referenced his co-operation with the Office.
2. 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 rectifying the effects of that failure by engaging with relevant road safety charities.
5. There has been no further incidence of non-compliance.
6. The positive character references submitted on behalf of the Respondent.

Aggravating Factors:

1. The serious nature of any drink driving offence.
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 pillion passenger and other road users.
4. A certain lack of candour in so far as the Respondent had stated at interview with the Deputy Commissioner's staff that he had decided himself to refer the matter to the Commissioner's office, and that he had not been told by his party (as the Commissioner has factually determined) to do so.
5. A lack of insight as to the seriousness of the matters under consideration. Whilst the Respondent attended the Adjudication Hearing on 17 April 2018 and accepting that he was not legally represented, and whilst he had broadly co-operated with the Deputy Commissioner's investigation, his demeanour on this date was disrespectful to the Adjudication Hearing process. The Commissioner made attempts to settle a time and date for the sanction hearing, but in response to an attempt to arrange an early morning hearing to facilitate his holiday arrangements, the Respondent refused this suggestion stating:

"It doesn't suit particularly well. I am actually out late the night before, the premiere of the new Avengers movie and I will be out until about 3.00am so getting up here for 8.00am would be significantly inconvenient for myself."

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. The Commissioner has considered and taken into account the economic impact of any suspension and the fact that the Respondent would not be paid allowances during any period of suspension. The Commissioner also noted that the Respondent is in employment at Queen's University Belfast.

The impact on the electorate in relation to the lack of the Respondent's voice at Council meetings and whilst undertaking Council duties has also been considered. The Commissioner also considered that, although not in his capacity as Councillor, the Respondent would be able to advocate for and support constituents in other respects.

Case Law

In the case of *Patrick Heesom v Public Services Ombudsman for Wales and the Welsh Ministers*¹, 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.

In the case of *Councillor Padraig McShane* the Acting Northern Ireland Local Government Commissioner for Standards found that the respondent had breached the Code in two respects, namely: had failed to comply with Council's policies which was a misuse of Council's resources; and had failed to assist in the Commissioner's investigation, and imposed a sanction of three months' suspension. The Councillor sought leave to appeal to the High Court. Burgess J on hearing the leave to appeal application on the issue of sanction in that case, found that the three month suspension was not 'excessive'².

The Commissioner has also considered jurisprudence from other jurisdictions including the *Heesom* judgment on the issue of sanction. In the *Heesom* case, the Councillor was found to have breached of the Welsh Local Government Code of Conduct (the Welsh Code) and was disqualified on appeal for eighteen months for conduct 'short of crime' towards Council officials. His conduct included failure to show respect for individuals and bullying behaviour.

In *Hathaway v Ethical Standards Officer [2004] EWHC 1200 (Admin)* a Councillor barged past a traffic warden, thereby assaulting him, to get [to] a market trader to whom he used violent language. The Councillor pleaded guilty to assault, was fined and disqualification of one year was upheld on appeal.

In *Sloam v Standards Board for England [2005] WEHC 124 (Admin)* the Councillor pleaded guilty to attempting dishonestly to evade four penalty charges issued by the Council and his appeal against one year disqualification was refused.

In the case of *Councillor Westerman*³ the Adjudication Panel for Wales imposed a sanction of six months suspension for breach of the Welsh Code for the criminal offence of

¹ [2014] EWHC 1504 Admin

² Case No C00030 - The decision of Burgess J is on appeal to the Court of Appeal; judgment is awaited.

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

cultivation and possession of cannabis (for personal use) contrary to the Misuse of Drugs Act 1971, which was a second offence.

Taking all of this into account, the Commissioner considers a suspension period of six months is both appropriate and proportionate in this case. The suspension will commence on 14 May 2018.

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 a number of learning points for Councillors and political parties to consider.

The Commissioner commends self-reporting to all Councillors as an important part of the Local Government Ethical Standards regime. The role of political parties in sanctioning individual Councillors is also significant. However, the Commissioner considers there is nothing to prevent a Councillor (including an independent Councillor) reporting him or herself promptly when a breach of the Code of Conduct is clear. This reporting should not impede or interfere with a party disciplinary process which is entirely separate. The Commissioner will consider consulting on and amending the Commissioner's Guidance on the Code to reflect good practice in this regard and to share the learning from this case.

DATED THIS 10 DAY OF MAY 2018

Mamie Anderson

NI LOCAL GOVERNMENT COMMISSIONER FOR STANDARDS

