



Northern Ireland

# Local Government Commissioner for Standards

## **Local Government Act (Northern Ireland) 2014**

### **In the Matter of Councillor Jolene Bunting (Belfast City Council)**

**Decision of the Acting Northern Ireland Local Government Commissioner for Standards following the Interim Adjudication Hearing held in the Resolution Centre at the Boat Building, 49 Queens Square, Belfast, on 4 September 2018.**

#### **1. Interim Adjudication Hearing:**

Acting Local Government Commissioner: Mr Ian Gordon OBE QPM  
Ms Marie-Louise Lowry, Solicitor and the Legal Assessor

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

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

Section 58 of the Act allows the production of an interim report, before the completion of a complaint investigation, where the Deputy Commissioner<sup>1</sup>, who is conducting the investigation, considers it is necessary in the public interest to do so.

On 16 August 2018, the Acting Commissioner received an interim report from the Deputy Commissioner, in relation to his investigation, into the complaints made against the Respondent (the Interim Report). After considering the Interim Report and its supporting papers, the Acting Commissioner directed that an Interim Adjudication Hearing be held.

Section 60 of the Act sets out the procedure to be followed by the Acting Commissioner, in relation to Decisions on Interim Reports.

Under Section 60(1) of the Act, where the prima facie evidence is such that it appears to the Acting Commissioner:

- (a) that the person who is the subject of the interim report has failed to comply with the Code of Conduct (Code);
- (b) that the nature of that failure is such as to be likely to lead to disqualification under section 59(3)(c);

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<sup>1</sup> The Commissioner has delegated to the Deputy Commissioner (and staff of the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland's Ombudsman's Office) the authority to conduct investigations and to report on the outcome of the investigations.

(c) that it is in the public interest to suspend or partially suspend that person immediately; The Acting Commissioner may suspend or partially suspend that person from being a councillor for a period of up to six months.

At the Hearing, the Deputy Commissioner was represented by Mr Gordon Anthony (Barrister). Councillor Jolene Bunting (the Respondent) was represented by Ms Bobbie-Leigh Herdman (Barrister).

## **2. THE COMPLAINT**

From 15 December 2017 to 14 August 2018, the Northern Ireland Local Government Commissioner for Standards received 14 complaints against Councillor Jolene Bunting, an elected member of Belfast City Council (the Council).

### **Complaints**

**C00164**

**C00172**

### **Complainants:**

**Cllr Donal Lyons**

**Cllr Georgina Milne**

Both complaints relate to a video published on social media on 13 December 2017 depicting the Respondent and Ms Jayda Fransen, Deputy Leader of Britain First, speaking on video outside the Belfast Islamic Centre. The complainants allege that the Respondent's actions and comments are in breach of the Code.

**C00177**

**Mrs Suzanne Wylie**

Mrs Wylie is the Chief Executive Officer (CEO) of Belfast City Council. Her complaint relates to a visit by Ms Fransen, on 9 January 2018, to Belfast City Hall Council Chamber facilitated by the Respondent. The complainant believes the actions of Ms Fransen, which were filmed during the visit, were inappropriate and that the facilitation by the Respondent was in breach of the Code.

**C00178**

**Cllr Emmet McDonough-Brown**

The complaint relates to an allegation that the Respondent made a reference to "problematic people", in the context of Islam during a full Council meeting on 3 January 2018. The complainant believes that this was prejudicial to members of a specific religious and racial group. It was clarified that the reference actually made was to "problematic members of society in Belfast" and "problematic sections of society".

**C00181**

**Names anonymised by request**

This complaint was made by 79 members of the public, who made the following allegations to the Ombudsman's Office, in relation to the Respondent:

- a. The Respondent co-organised and took part in a rally in Belfast on 6 August 2017: 'Northern Ireland against Terrorism', in conjunction with Britain First. A video of the rally was published on YouTube in which Ms Fransen made comments about Islam and Muslim people which is alleged were supported by the Respondent.
- b. In a Newsletter article dated 8 August 2017 the Respondent reiterated her support for the claims made by Britain First at the rally.
- c. In a video update on her Face Book page, the Respondent referred to Ms Fransen "telling the truth about the Islamification of the UK and the world".
- d. The Respondent appeared on the BBC radio programme 'Talkback', when it is alleged she confirmed Ms Jansen's views and agreed with comments about Muslim people made by a caller to the programme.
- e. The Respondent inappropriately facilitated a visit to Belfast City Hall Council Chamber in January 2018 (see C00177 above)

- f. The Respondent co-ordinated, crowd funded and hosted an event on 13 January 2018 when a film, 'Can't we talk about this', which seeks to make a case there is a threat posed by Islam to society, was publicly shown.

**C00200 Mr Graham Morris**

The complainant alleged that the Respondent's association with and public support for, an openly Islamophobic group - Britain First - has had an adverse effect on the Council's reputation and on public trust in the position of a councillor.

**C00299 Mrs Suzanne Wylie (CEO, Belfast City Council)**

In a second complaint on 8 June 2018, the complainant alleged that the Respondent, in a meeting of the City Council held on 9 April 2018, had made statements in relation to a leaflet widely condemned as being racist which was distributed in East Belfast. Councillors complained to the CEO about the Respondent.

**C00171 Mr Ryan Fitzsimmons**

**C00206 Miss Deirdre Hargey**

**C00251 Ms Mary McConville**

**C00257 Mr Conor Maskey**

**C00279 Ms Fiona Johnston**

**C00285 Mr Jim Hughes**

**C00288 Mr Peter Craven**

**C00299 Mrs Suzanne Wylie**

These complaints followed a social media posting by the Respondent on 3 May 2018 where the complainants allege its content, a cartoon meme, was sectarian and racist in nature. This posting by the Respondent resulted in a total of 87 complaints being made to the LGES Directorate, eight of which became formal complaints.

The Interim Report by the Deputy Commissioner comments that this level of complaints, against one councillor, is unprecedented.

### **3. THE INTERIM ADJUDICATION HEARING**

The determination, by the Acting Commissioner, is based on the Interim Report, the Councillor Response Form, the oral submissions made at the Interim Adjudication Hearing by each of the parties' Representatives on the provisions of Section 60(1) of the Act including sub-sections (a), (b) and (c) and the evidence provided at the Interim Adjudication Hearing. It is based on whether or not there is '**prima facie evidence**' of a failure by the Respondent to comply with the Code. The Acting Commissioner does not, therefore, 'determine facts' in this Interim Hearing as he would at a full Adjudication Hearing.

It was agreed at the outset by both parties that:

- The Local Government Act (NI) 2014 provides that the Code will apply to all Councillors.
- The Respondent is an elected member of Belfast City Council; she signed the Declaration of Acceptance of Office on 24 May 2014.
- In signing the declaration, the Respondent undertook to observe the Code.

### **4. SUBMISSION BY MR ANTHONY FOR THE DEPUTY COMMISSIONER**

At the outset, Mr Anthony commented that in relation to Article 10 of the European Convention on Human Rights (ECHR), there was no dispute that Article 10, which is subject to limitations,

is engaged in this case; the Deputy Commissioner had considered Article 10 in the preparation of his Interim Report. Mr Anthony further commented, that there was nothing in law to say that rights to freedom of expression can be interfered with, or limited, at an interim stage. He submitted that there was no preliminary objection in relation to Article 10.

Mr Anthony said the Code is based on 12 principles of conduct which are intended to promote the highest possible standards of behaviour for councillors. He identified the following principles as being particularly relevant to the complaints made:

- a. Public duty – “you have a general duty to act in the interests of the community as a whole”.
- b. Selflessness – “you should act in the public interest at all times and you should take decisions solely in terms of the public interest”.
- c. Leadership – “to ensure the integrity of your council and its councillors in conducting business”.
- d. Equality – “you should promote equality of opportunity and not discriminate against any person”.
- e. Promoting good relations – “you should act in a way that is conducive to promoting good relations ..... to promote a culture of respect, equity and trust and embrace diversity in all its forms”.

He identified the following Rules of the Code as being relevant to the complaints made:

- a. 4.1 Councillors must act lawfully, in accordance with the Code
- b. 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.
- c. 4.8 You must maintain and strengthen the public trust and confidence in the integrity of your council. You must promote and support the Code at all times...

Mr Anthony referred to the Interim Report and summary of the complaints (paragraph 15 to 53):

**C00181** on 6 August 2017, the Respondent co-organised a rally with Britain First (a right-wing organisation) which was video recorded. The Deputy Leader of Britain First, Ms Fransen, referred to instructions in the Quran “*for every single Muslim, not just the extremists*”. She is recorded as saying:

- *“there is no moderate Islam”.*
- *“You follow the Quran, you have to kill every non-Muslim in sight, that’s the reality that is the new threat”*
- *“Britain First will be leading the campaign against every single Mosque that is proposed in Northern Ireland”*
- *“Britain First will make sure these dens of iniquity do not cover every street corner of this beautiful country”.*

The Respondent is recorded as saying:

- *“Jayda I will be holding you to what you said today’.*
- *“Jayda has made some extremely good points about Islam. This is a worldwide threat”.*

Mr Anthony said that Ms Fransen is facing criminal charges related to her comments during the event. The Respondent has not been interviewed by the Police Service of Northern Ireland (PSNI) in relation to the events at the rally.

Mr Paul Golding (leader of Britain First) also spoke at the rally condemning Muslim immigration. He said that “*politicians are deliberately replacing us in our own country. It’s an act of genocide.*”

In a Newsletter article published on 8 August 2017 the Respondent reiterated her support for the claims made by Britain First at the rally two days earlier:

- The first line of the article states: *“A Belfast Councillor has said she is happy to stand over claims that “all Muslims” are obliged to “wage war” on the Christian population of the UK and Europe”*.
- When asked if she thought any of the speakers went too far in the denouncement of Islam, she said: *“No”*.

On 19 November 2017, in a video update on her Face Book page, the Respondent refers to Ms Fransen *“telling the truth about the Islamification of the UK and the world”*.

The Respondent appeared on the BBC radio programme ‘Talkback’ when she said, *“I’m not going to distance myself from her (Ms Fransen) opinion”*. She agreed with sentiments expressed by a caller to the programme who claimed that the Quran *“teaches hate and evil, it’s disgusting”*. She claimed that Muslims are, *“taught to hate”* and that the Quran directs that Muslims have to *“kill us (non-Muslims) for not believing in Allah”*

**C00178** on 3 January 2018 in a meeting of the Council the Respondent said, *“Lord Mayor what worries me is that in the future we are not going to be able to speak about problematic members of society in Belfast”*, where ‘problematic members’ inferred Muslims.

Mr Anthony submitted that all of the statements set out above are anti-Islamic statements which were made or supported by the Respondent.

**C00177** on 9 January 2018 the Respondent facilitated a visit by Ms Fransen to the Council Chambers, and its filming, where Ms Fransen sat in the Mayor’s chair, wearing the ceremonial robe provided for councillors. In her statement, Mrs Wylie (CEO) was concerned that Ms Fransen had used the occasion as a platform to comment on criminal proceedings against her in Belfast Magistrates Court. The CEO thought this entirely inappropriate; Ms Fransen is not a member of Belfast City Council and there had been no arrangements in place for a visit to be carried through. A letter from the CEO to the Deputy Commissioner described a meeting between the CEO and the Respondent relating to the matter:

*“On 12<sup>th</sup> January 2018 I met with Councillor Bunting at her request. I advised her that I had referred her to the Local Government Commissioner for Standards. Councillor Bunting told me that she was not aware that she had done anything wrong. However, she commented that: “in hindsight perhaps it wasn’t the best thing to do”. I have provided a copy of the note of the meeting at Exhibit SW6. Given that Councillor Bunting is an independent councillor, in my view, her conduct has not had a significant impact on the proper functioning of the Council. This needs to be distinguished from reputational damage, which I am satisfied her conduct has had the potential to cause. The conduct which has given cause for concern covers Councillor Bunting’s general role as a councillor”*.

It is alleged that, immediately following her meeting with the CEO, the Respondent posted a video on Facebook in which she said that the CEO was going to make a report to the Local Government for Standards Councillor and, despite what she said to the CEO during their meeting, stated in the video *“I have no issue with the Commissioner investigating this as I have done nothing wrong.”*

Other complainants (C00181) said it was not routine that such tours are used to facilitate a video update on criminal proceedings linked to anti-Islamic conduct.

**C00181** on 14 January 2018, when the Respondent organised an event where the film ‘Can’t we talk about this’, which seeks to suggest there is a threat posed by Islam to society, was

aired in public. A trailer for the film includes the Respondent quoting a guest speaker describing Islam as “an evil ideology”

**C00299** on 9 April 2018, in the Council Chamber, the Respondent had made statements in relation to a leaflet, widely condemned as being racist, as a document produced for public information. Extracts of the leaflet:

- “By 2066 the British people will be a minority in the United Kingdom”.
- “Fact. We never voted for our own ethnic replacement”
- “War is coming”.
- “Our forefathers sacrificed at the Somme for God and Ulster; not for rampant multiculturalism and Jihadists .... Ulster must resist. No Surrender “.

**C/00171, 00206, 00251, 00257, 00279, 00285, 00288, 00299** all refer to the cartoon meme (Exhibit SW4) which was published by the Respondent in a social media posting on 3 May 2018. where the complainants allege its content, a cartoon meme, was sectarian and racist. In her statement, the CEO said:

*“It is particularly unacceptable that Councillor Bunting used the Council chamber on 9th April 2018 to make the kind of statements she made. In my opinion Councillor Bunting’s conduct referred to in both of my complaints has caused a level of reputational damage to Belfast City Council. Should such conduct continue I believe it has the potential to cause serious reputational damage.”*

**Article 10 ECHR:** Mr Anthony was cautious not to presume that every comment associated with the Respondent, in the Interim Report, exceeded the threshold above which it became reasonable and necessary to interfere with the Respondent’s Article 10 rights. He submitted that the statements that may lie beyond the protections of Article 10 ECHR, related to those comments about Islam that were made either by Jayda Fransen and/or Councillor Bunting which were the subject of complaints: C00164; C00172 and C00181.

Mr Anthony submitted that action by the Respondent which, in his view, did not enjoy the protection of Article 10 was the frog meme which was the subject of 87 complaints, 8 of which became formal complaints: C00206; 171; 251; 257; 279; 285; 288; 299 (Interim Report paragraph 69 to 70). These complaints described the meme as sectarian and racist in content, as well as discriminating against children with autism.

**i. Section 60(1)(a)**  
Potential breaches of the Code

The Interim Report at paragraphs 59 to 79 sets out the Deputy Commissioner’s reasons to believe the Respondent has breached the Code.

Mr Anthony said the multiple complaints, as commented on above, about the Respondent, would indicate the following principles of the Code to be engaged: public duty, equality, promoting good relations, respect and leadership.

The Deputy Commissioner is of the view that the various complaints and the actions complained of are best looked at cumulatively. The multiple complaints arising from statements the Respondent has made on YouTube and social media and from her association with the far-right group ‘Britain First’ alongside the content of the cartoon meme published on 3 May 2018 would indicate that the following principles of the Code are engaged:

4.1 (b) ‘Councillors hold public office under the law and must act in accordance with the Code.’

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.'

4.11 'You must ensure that you are aware of your council's responsibilities under equality legislation, and that you are familiar with the relevant legislative statutes and provision, in particular, with the obligations set out in your council's equality scheme.'

4.12 'You are entitled to legally express any political opinion that you hold. In doing so, however, you should have regard to the Principles of Conduct and should not express opinions in a manner that is manifestly in conflict with the Principles of Conduct.'

4.13 (a) 'You must show respect and consideration for others.'

4.16 (a) 'You must not use, or attempt to use, your position improperly to confer on, or secure, an advantage for yourself or any other person.'

4.16 (c) 'You must not use, or attempt to use, your position improperly to avoid a disadvantage for yourself or any other person, or to create a disadvantage for any other person.'

4.18 (a) 'You must not use, or authorise others to use, the resources of your council imprudently.'

4.18 (b) 'You must not use, or authorise others to use, the resources of your council in breach of your council's requirements.'

4.18 (c) 'You must not use, or authorise others to use, the resources of your council unlawfully.'

4.18 (d) 'You must not use, or authorise others to use, the resources of your council other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of your council or of the office to which you have been elected or appointed.'

4.18 (e) 'You must not use, or authorise others to use, the resources of your council improperly for political purposes.'

ii. **Section 60(1)(b)** (Interim Report paragraph 80 to 93)  
'the nature of the failure is such as to be likely to lead to disqualification'

Of particular relevance is paragraph 19 of the Commissioner's Sanction Guidelines which sets out 8 factors which may lead to the option of disqualification. The Deputy Commissioner is of the view that the following 5 factors may be applicable in this case:

b. The Respondent having deliberately sought to misuse his or her position in order to disadvantage some other person.

d. Repeated failures to comply with the Code by the Respondent.

f. Misusing council resources.

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

h. If the conduct giving rise to the failure to comply with the Code is such as to render the Respondent entirely unfit for public office, then disqualification is likely to be the appropriate sanction.

The Deputy Commissioner has taken account of the Commissioner's Guidance on the Code at 4.5.4 on "bringing your position or your Council into disrepute":

*"in considering whether the Respondent's actions or behaviour could reasonably be regarded as bringing their position, or their council, into disrepute, she will assess:*

- *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”.*

Mr Anthony referred the Acting Commissioner to paragraphs 80 to 93 of the Interim Report, which details the Deputy Commissioner’s contentions as to why the Acting Commissioner should consider that the nature of the breaches of the Code by the Respondent would be likely to lead to disqualification.

- iii. **Section 60(1)(c)** (Interim Report section 94 to 103)  
‘in the public interest to suspend or partially suspend immediately’

Mr Anthony referred the Acting Commissioner to paragraph 97 to 103 of the Interim report where the Deputy Commissioner refers to paragraph 33 of the Sanctions Guidelines and concerns about the proper functioning of the Council, the maintenance of public confidence in the Council and the effective completion of the investigation.

In relation to the proper functioning of the Council, the Deputy Commissioner comments that while the CEO has indicated that the Respondent’s conduct has not had a significant impact, he is satisfied that at various intervals in the last eight months, a significant proportion of time has been spent by the CEO: in dealing with the concerns and the complaints raised; meeting with the Respondent and writing to the LGES Directorate to make complaints.

The Deputy Commissioner is of the view that suspension is necessary to maintain public confidence in the integrity of the Code and the need for councillors to ensure respect for others in circumstances where potential breaches of the Code are frequent and ongoing. He considers that partial suspension is not appropriate in this case as the behaviour which is the subject matter of the complaints applies to the Respondent’s general conduct and not to any specific part of Council business from which she could be temporarily excluded.

For the effective completion of his investigation, given the frequent, ongoing, repetitive and escalating nature of the alleged breaches of the Code by the Respondent, it is the intention of the Deputy Commissioner to deal with each of the individual complaints within a single investigation. He submitted that his ability to effectively complete his investigation has been negatively impacted by the level of complaints received in this matter.

## **5. SUBMISSION BY MS HERDMAN FOR THE RESPONDENT**

Ms Herdman said she was mindful of the lower threshold of the test evidentially that would be applied so she would not go into the full detail of what the Respondent may well say during the course of any further investigation and may well later add in time to what Ms Herdman has said in the Interim Hearing.

**Complaints: C/00171, 00206, 00251, 00257, 00279, 00285, 00288, 00299** relate to the cartoon meme. It was submitted that the Respondent had not read the cartoon and was not aware of the wording of the caption on the hat of the smaller frog. When she became aware she took down the original posting and replaced the caption with a European Symbol. The Respondent had used the cartoon, which signifies BREXIT, after hearing views from her contacts in the Republic, and it indicated her intention – all out of the EU.

Ms Herdman said there was nothing in the cartoon to identify it with 'autistic children' and asked where the evidence for such a contention was in the Deputy Commissioner's report. The Respondent absolutely refutes there is anything in the prima facie evidence in relation to that meme that suggests an intention to mock autistic children. The Respondent had no knowledge of the frog having been used to mock autistic children and had no intention to mock autistic children or anyone else.

Ms Herdman said the Respondent accepted that the Acting Commissioner may find that there has been a breach of the Code. However, she submitted that it was a genuine mistake on the Respondent's part which did not amount to a serious breach of the Code.

**Complaint C00177** The Respondent accepted that she conducted the visit by Ms Fransen to the Council Chamber and that, with hindsight, she should have asked permission for this. The Respondent said there was nothing in the video which could be criticised and that the video did not promote any political cause or gain of herself or anyone else. There was no criticism of Islam. She considers any breach of the Code relating to this would be at the lower level and not so serious as to reach disqualification.

Before dealing with the remainder of the complaints, in the context of complaint C00299, to which reference is made below, Ms Herdman made a number of general submissions which included that at the Interim Adjudication Hearing, the Deputy Commissioner's Representative had spent a considerable amount of time reading from transcripts of commentary by Mr Paul Golding (leader of Britain First) and/or Ms Fransen. Ms Herdman submitted that the Respondent was not a member of Britain First and that it would be inappropriate and unfair for her to be sanctioned on the basis of commentary by Mr Golding and Ms Fransen, which on the face of it was clearly very much more extreme than any opinion the Respondent had ever expressed directly herself.

Ms Herdman submitted that the support by the Respondent for Britain First was to try to assist it to adopt appropriate structures and to become more of a credible political party than a street organisation.

Ms Herdman said the Respondent's interactions with Britain First tailed-off very significantly after the beginning of January of this year (2018) because she recognised that the extreme elements of that group were taking priority over more moderate elements of that group and that it was not an organisation with which she could align herself any longer.

It was further submitted that the Respondent has not vilified or stigmatised Islam, rather that she has concerns about radicalisation and extremism and the demonstrated link between those groupings within Islam and violence and terrorist activity. She submitted that she welcomes Muslims living in Northern Ireland.

**Complaint C00181** Ms Herdman submitted that, in the BBC Radio programme, Talkback, the Respondent did say:

- *"I'm not going to distance myself from her (Ms Fransen) opinion".*

Further, Ms Herdman said that the Respondent stands by her own comments on "evil in the Quran" and the Quran being used by persons for terrorism, in the same way as quotations from the Bible have been used out of context in an attempt to justify barbaric acts.

Ms Herdman said that the Respondent has moved away from Britain First.

On 19 November 2017, Ms Herdman said when the Respondent gave a video update on her Facebook page, about Ms Fransen, "*telling the truth about the Islamification of the UK and the world*", it reflected the Respondent's own view of Islam. She saw nothing untoward in that view or which went beyond the protections offered by Article 10 (ECHR) and her right to freedom of expression.

**C00172** The Respondent refutes the suggestion that the comments made by Ms Fransen, in the video taken outside the Belfast Islamic Centre on 13 December 2017, reflected her own views.

**C00178** In relation to the comment, “*problematic people*”, Ms Herdman said that the Respondent says that she did not mention Islam or anything like it in the exchange in the Council Chamber. She characterised this complaint as weak and said that an assumption was being made about to whom the description “*problematic*” referred.

**C00299** In relation to the Council meeting on 9 April 2018, Ms Herdman said that none of the Respondent’s comments were criticisms of Islam, she was only expressing her own views. The Respondent continues to have concerns about radicalisation and extremism. Ms Herdman said the Respondent acknowledged that the information in the leaflet (Exhibit SW3) was not presented in a tactful way but that the Respondent maintains that much of the content is based in fact, particularly the recent Islamic terrorist attacks she believes and there are dangers of radicalisation. She only pointed out in the Council meeting that some of the information was factual; she says that she was not involved with the compiling or distribution of the leaflet.

**C00200** The Respondent’s support for Britain First was addressed in Ms Herdman’s general submissions in the context of complaint C00299 (see above). She was within her rights to explore that option with that organisation and those individuals; and to try to moderate the tone with which their message was expressed. Once she realised that she was not going to be able to do that she took the prudent decision of disassociating herself from them.

**i. Section 60(1)(a)**

Potential breaches of the Code

In respect of the meme<sup>2</sup> and in respect of the Council Chamber visit<sup>3</sup> the Respondent accepted that the Commissioner may find, on the prima facie evidence, that there may have been a breach of the Code, but at a much lower end of seriousness.

In terms of the rest of the allegations, Ms Herdman made the following submissions on behalf of the Respondent: the Respondent does not accept that there was prima facie evidence of a breach of the Code; she maintains that she was expressing her legitimate and considered opinion on each of the occasions in question; she was well aware that anything that would amount to a hate speech or an incitement of violence was not only unlawful but entirely inappropriate coming from any member of the public, let alone an elected representative; she has never come close to crossing either the line of inappropriateness or the line of that which is protected by her right to freedom of expression.

Ms Herdman said it was simply incorrect that because the Respondent was saying something that may well be very unpopular within the Council Chamber it amounts to disrepute. She submitted that the Respondent has never encouraged that the Islamic community be disrespected, disadvantaged in any way, treated less favourably than other members of society or treated in any way that was in breach of the equality legislation.

The Respondent has concerns about the spread of radical Islam and the link between radical Islam and violence and terror. Ms Herdman submitted that this is a legitimate opinion and one which an elected representative should not be forbidden from expressing. She submitted that expressing this opinion certainly does not place her in breach of the Code.

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<sup>2</sup> Complaints: C/00171, 00206, 00251, 00257, 00279, 00285, 00288, 00299

<sup>3</sup> Complaint: C00177

**ii. Section 60(1)(b)**

‘the nature of the failure is such as to be likely to lead to disqualification’

Ms Herdman referred to the suggestions in the Interim Report (para 9) that:

- serious reputational damage has been caused to the Council and that the Council has been brought into disrepute by the Respondent.
- the allegations render the Respondent entirely unfit for office.

Ms Herdman submitted that the Respondent expressing a view contrary to that held by others in the Council Chamber did not bring the Council into disrepute. She further said that, even if there was prima facie evidence of a failure to comply with the Code of Conduct, the nature of the alleged failures is such that it would not lead to a disqualification when applying the Sanction Guidelines.

Ms Herdman said there is no history of the Respondent breaching the Code, nor has she been interviewed by the PSNI in relation to any of the matters in the Interim Report; she has no criminal history. To suggest that elected representatives cannot express controversial views in the Chamber would restrict their right of freedom of expression under Article 10 of ECHR

**iii. Section 60(1)(c)**

‘in the public interest to suspend or partially suspend immediately’

Ms Herdman referred to paragraph 31 of the Sanction’s Guidelines:

*“Even where it is likely that, if substantiated, disqualification would result the Commissioner will be unlikely to impose an interim suspension, or a partial suspension unless there is a compelling reason in the public interest for such an interim suspension to be imposed in advance of the completion of the investigation and a later adjudication hearing”.*

Ms Herdman refuted the Deputy Commissioner’s conclusions, in paragraphs 98 to 103 of the Interim Report, on:

- the proper functioning of the Council – the CEO has stated the actions of the Respondent have not had a significant impact on the functioning of the Council and that the CEO was in a much better position to know.
- the maintenance of public confidence – petitions of the type referred to are not reliable. The Respondent’s work in her constituency is widespread and there is no complaint from any of her constituents.
- the effective completion of the investigation – this would need some element of interference by the Respondent and there was no evidence that would occur.

Ms Herdman cited a previous Adjudication Hearing case<sup>4</sup> where, despite the councillor having previous criminal convictions - including one for sexual assault, he had remained in post for a year after that conviction. That was a more serious offence, yet it was not deemed appropriate to seek an interim suspension of that councillor. In terms of comparable treatment, it would be entirely inappropriate for the Respondent to be suspended when a convicted sex-offender remained as a councillor for a year after conviction.

Ms Herdman outlined the personal and financial impact which a suspension would have on the Respondent.

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<sup>4</sup> Councillor Patrick Clarke, Adjudication Hearing on 20 October 2016 - Complaint Ref: C00035 (“the Clarke case”)

Ms Herdman submitted that the maintenance of public confidence demands that the Respondent stay in post until she the full investigation has been completed that there is a full hearing and a full consideration of all of the matters raised.

## **6. ACTING COMMISSIONER'S FINDING**

As set out above, under Section 60(1) of the Act, where the prima facie evidence is such that it appears to the Acting Commissioner:

- (a) that the person who is the subject of the interim report has failed to comply with the Code of Conduct (Code);
- (b) that the nature of that failure is such as to be likely to lead to disqualification under section 59(3)(c);
- (c) that it is in the public interest to suspend or partially suspend that person immediately; the Acting Commissioner may suspend or partially suspend that person from being a councillor for a period of up to 6 months.

### **i. Section 60(1)(a) Prima facie evidence – failure to comply with the Code**

The parties agree that, in relation to each of the complaints, the Code applied to the Respondent. Based on the Deputy Commissioner's Interim Report and the submissions made by each Representative, the Acting Commissioner finds there is prima facie evidence that the Respondent failed to comply with the Code for the reasons set out below.

In relation to the allegations about the meme<sup>5</sup> and the Council Chamber<sup>6</sup> the Respondent has accepted that the Acting Commissioner may conclude she has breached the Code.

The Acting Commissioner has considered the complaints made against the Respondent and their investigation both as individual matters and as a course of conduct followed by the Respondent.

The Acting Commissioner finds that the Interim Report on complaints C00164, 172, 177, 181, 200 appears to provide prima facie evidence of the Respondent's public association with the far-right political group, Britain First.

There is video evidence of the Respondent organising events involving Britain First in Belfast on the 6 August 2017 and on 13 December 2017, outside the Belfast Islamic Centre, then supporting the views expressed there by Ms Fransen, the Deputy Leader of Britain First. Those views appear to be critical of Islam and Muslims living in Northern Ireland. The Respondent had the opportunity to distance herself from them, if indeed these were very much more extreme than her views as has been submitted. She chose not to do this, in particular in the Newsletter article on 8 August 2017 and in the Talkback programme on 13 December 2017.

- The Acting Commissioner is not convinced by the Respondent's assertion that her association with Britain First was to encourage it to become more moderate and to improve its structure.
- The Respondent's association with Britain First was over a period of time, between August 2017 and January 2018 and events appeared to be planned and their content premeditated.

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<sup>5</sup> Complaints: C/00171, 00206, 00251, 00257, 00279, 00285, 00288, 00299

<sup>6</sup> Complaint: C00177

- The organisation of the visit to Belfast Council Chamber by Ms Fransen; allowing her to wear Councillor’s ceremonial robes; allowing her to make comments on her forthcoming criminal proceedings arising from the rally in Belfast on 6 August 2017, which relate to the incitement of hatred of Muslims.

These actions all raise questions about the Respondent’s conduct as a councillor.

The Acting Commissioner finds that the Interim Report on complaints C00171; 206; 257; 279; 285; 288; 299 appears to provide prima facie evidence that the Respondent used a social media posting on 3 May 2018 where the complainants allege that its content, a cartoon meme, was sectarian and racist in nature.

In relation to complaint C00178, the Acting Commissioner has viewed the webcast of the Council meeting to which the complaint relates. Given that, at 1 hour 19 minutes and 40 seconds into the meeting, Councillor Bunting can be seen and heard to make specific reference to Islam and then the Quran, apparently in the context of “problematic members”/ “problematic sections” of society, the Acting Commissioner does not accept the submissions made on behalf of the Respondent that “at no time during that exchange within the Council meeting did she mention Islam or anything like it....or mention Islam at any stage during that exchange”. The Acting Commissioner therefore finds that there is prima facie evidence to support this complaint.

The Acting Commissioner is satisfied that there is prima facie evidence that the Respondent has failed to comply with the Code.

**ii. Section 60(1)(b)**

‘the nature of the failure is such as to be likely to lead to disqualification’

The Acting Commissioner will only decide on this Interim Hearing; any later Adjudication Hearing will take place before the Commissioner. In deciding whether or not the nature of the failure is such as to be likely to lead to disqualification, the Commissioner will consider the circumstances of the case itself, the Procedures for Adjudication Hearings, in particular the Sanctions Guidelines, together with the Guidance issued by the Commissioner in relation to the Code.

Drawing on the submissions in the Interim Hearing, the relevant procedures and guidance documents, the Acting Commissioner finds that, if substantiated:

- The failures to comply with the Code were serious breaches which have been repeated over a period of time.
- The Respondent has misused council resources.
- The failures arose from events which had been pre-planned, which may indicate an intentional failure to comply with the Code.
- The Respondent’s actions have brought the Council into disrepute and the extent of the reputational damage is so serious as to warrant a disqualification.
- The Respondent has failed to heed appropriate advice from the CEO.

The Acting Commissioner notes the Respondent’s previous record of good service, which can be raised as a mitigating factor at any later Adjudication Hearing.

The Acting Commissioner finds that in this case the nature of the failures is such as to be likely to lead to disqualification under section 59(3)(c).

**iii. Section 60(1)(c)**

‘in the public interest to suspend or partially suspend immediately’

The Acting Commissioner notes that the key principle, when considering sanction, is 'public interest. Paragraph 3 of the Sanctions Guidelines sets out this interest in a wide context:

*"The Commissioner's consideration of the sanction decision in any case will be based on her view that the principle purpose of sanctions is the preservation of public confidence in local government representatives. Her decisions on sanctions 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. Thus, any sanction imposed will be justified in the wider public interest and will be designed to discourage or prevent the particular Respondent from any future failures to comply with the Code, and to discourage similar conduct by others".*

Both Representatives made submissions in line with Paragraph 33 of the Sanctions Guidelines which require account to be taken of:

- a. the proper functioning of the council;
- b. the maintenance of public confidence; and
- c. the effective completion of the investigation.

The Acting Commissioner notes the CEO's view, on the 'proper functioning of the council', based on the Respondent being an Independent councillor, that:

*"in my view her conduct has not had a significant impact on the proper functioning of the Council"*

but the CEO went on to say:

*"This needs to be distinguished from reputational damage which I am satisfied her conduct has had the potential to cause".*

There has been considerable publicity of the events to which the complaints relate and the number of complaints against the Respondent is unprecedented. Much of that publicity was generated by the Respondent, regardless of the reaction to her actions and comments which was clear from the complaints made against the Respondent and from her meeting with the CEO. It is difficult to see how this would not be detrimental to the reputation of the Belfast City Council in the eyes of the public, yet the Respondent continued with her actions over a period of time.

The aim of the Code is to improve the standard of conduct expected of councillors and to foster public confidence in the ethical standards regime.

The Acting Commissioner is satisfied that the conduct of the Respondent, with the attendant media publicity, is such that it is likely to diminish the trust and confidence that the public places in her as a Councillor and in the Council, which the public expects to ensure an appropriate standard of conduct from Councillors and to uphold the ethical standards regime. He has therefore determined that a member of the public, knowing all of the relevant facts, would reasonably consider that the Respondent's conduct is such that it brought her position as a Councillor and her Council into disrepute by her actions.

The Acting Commissioner has considered points a. and b. collectively. On the prima facie evidence of the failure by the Respondent to comply with the Code, he finds there has been an impact on the proper functioning of the Council. It is likely that there has been reputational damage to the City Council. The repeated failures by the Respondent to comply with the Code and the subsequent publicity, often self-generated, is likely to have had a negative impact on public confidence.

The Acting Commissioner has considered whether further inappropriate conduct by the Respondent would be likely to impact on the effective completion of the Deputy

Commissioner's investigation. He notes the submission by Ms Herdman that there was no evidence that the Respondent would interfere with the investigation. However, this alone cannot be determinative of the Acting Commissioner's decision. There has been a series of intentional actions, by the Respondent, which led to this investigation and there is now prima facie evidence of serious breaches of the Code. There is prima facie evidence that those breaches are likely to diminish the trust and confidence that the public places in her as a Councillor and in the Council. The Respondent has failed to heed previous concerns about her conduct which raises a question regarding further inappropriate conduct in the future.

The Acting Commissioner has taken account of all three elements of section 33 of the Sanctions Guidelines and the weight which, in his consideration, should be attached to each element in the circumstances of this case. He has also considered the Deputy Commissioner's submission in relation to partial suspension. The Acting Commissioner is satisfied that a complete interim suspension of the Respondent is necessary in this case.

**Article 10 ECHR:** The Acting Commissioner is conscious of the legislative framework and the fact that the requirement that he satisfy himself that the nature of the failure is such as to be likely to lead to disqualification provides the Respondent with protection at interim stage in relation to her Convention rights. The Acting Commissioner has carefully considered Article 10 of the ECHR and the fact that Councillors operate in a political environment and must be free to make political points and discuss matters of public concern without undue interference. He is, however, cognisant that the right to freedom of expression is not absolute and that restrictions can be imposed to protect the rights and reputations of others. He considers that any interference with the Respondent's freedom of expression arising from the suspension is justified with reference to Article 10(2) as it is prescribed by law and is necessary in a democratic society to maintain standards, protect the rights and reputation of others and ensure that the council (or the office of a councillor) is not brought into disrepute.

The Acting Commissioner accepts the Deputy Commissioner's submission that any interference with the Respondent's right to freedom of expression relates only to the exercise of that right as a councillor and not as a private individual.

In all the circumstances of this case, the Acting Commissioner is satisfied that the interim suspension and any resultant interference with the Respondent's right to freedom of expression is necessary and proportionate and that it is in pursuance of a legitimate aim.

In the Clarke case in relation to which Ms Herdman made submissions, the interim process was not triggered by the then Deputy Commissioner. It is not unsurprising that, in a relatively new jurisdiction, the present case is the first time that the interim order provisions have been engaged and it is neither necessary nor helpful to consider why they were not engaged in the Clarke case or indeed in any of the other cases which have been decided.

## **7. SANCTION**

The Acting Commissioner has taken into account Ms Herdman's submissions regarding the significant impact which suspension would have on the Respondent, both as a councillor and in her personal life. He has also taken into account the fact that there is a series of events which appear to show some serious breaches of the Code by the Respondent. Paragraph 32 of the Sanctions Guidelines provides that "*Some allegations may be of such gravity as to lead to a loss of public confidence in the council if the Respondent were to remain in office whilst the allegations are being investigated*". The Acting Commissioner is satisfied that, in this case, the 'maintenance of public confidence' outweighs the personal and financial impact on the Respondent.

The Acting Commissioner has considered the Deputy Commissioner's submission that it is likely that a period of 6 months will be required to complete the investigation.

The decision of the Acting Commissioner, made under Section 60(1) of Part 9 of the Local Government Act (Northern Ireland) 2014, is to suspend the Respondent for a period of four (4) months.

The sanction is to have effect from 4.00pm on Friday the 21 September 2018

## **8. RIGHT OF APPEAL**

The Respondent may appeal to the High Court against this decision in accordance with the provisions of Section 60(9) of the Local Government Act (Northern Ireland) 2014.

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

Ian A Gordon  
Acting Local Government Commissioner for Standards

15 September 2018