



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

In the Matter of Former Councillor Patrick Brown Newry, Mourne and Down District Council

Case Reference: C00416

DETERMINATION ON ADJUDICATION

The Northern Ireland Local Government Commissioner for Standards, Ms Margaret Kelly (the Commissioner), appointed Mr Ian Gordon, OBE, QPM, as Assistant Local Government Commissioner (the Assistant Commissioner) in relation to the Adjudication process in respect of this complaint. Mr Gordon was assisted by Mr Michael Wilson, Solicitor, Legal Assessor.

1. COMPLAINT

On 1 July 2019 the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman's Office received a complaint from Mr Liam Hannaway alleging that former Councillor Patrick Brown, then a member of Newry, Mourne and Down District Council ('the Council') had, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors ('the Code'). The complaint was dated 27 June 2019.

Both former Councillor Brown and Mr Hannaway were informed on 30 July 2019 that an investigation into the allegations was commencing. Mr Hannaway alleged that former Councillor Brown published on Facebook the content of a meeting held 'in committee' regarding the appointment of an interview panel for the post of Council Chief Executive Officer (CEO). Mr Hannaway also complained that former Councillor Brown published his

understanding of what happened during a confidential interview process for the Council CEO. Mr Hannaway confirmed by telephone on 24 July 2019 that the confidential information he was referring to in relation to this was: *“I’ve heard Sinn Fein & UUP voted for the appointment and SDLP and DUP voted against”*.

Mr Hannaway alleged that former Councillor Brown’s disclosure:

- broke confidence.
- brought the Council’s recruitment process into disrepute.
- suggested that the recruitment process was political rather than representative of community and gender.
- had the potential to damage relationships between Council political parties by suggesting how each party voted in the recruitment process.
- had the potential to damage the newly appointed CEO, Mrs Marie Ward’s, prospective relationship with party groupings; and
- breached several of the Nolan Principles of Public Life.

The allegation was investigated by the Deputy Commissioner and his staff in LGES. The Assistant Commissioner has no role in the receipt, assessment or investigation of a complaint.

The Deputy Commissioner submitted a report, dated 23 March 2023, to the Commissioner in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014, and it was accepted for Adjudication by the Assistant Commissioner on 24 October 2023.

Breaches of the Code

The alleged breaches of the Code were:

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.”

Paragraph 4.6:

“You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner’s statutory powers.”

Paragraph 4.13 (a):

“You must show respect and consideration for others”.

Paragraph 4.14:

“You must work responsibly and with respect, with others and with employees of councils.”

Paragraph 4.15:

“You must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required to do so by law.”

In his Investigation Report, the Deputy Commissioner said he had found evidence which would point to former Councillor Brown having potentially failed to comply with the following paragraphs of the Code:

- Paragraph 4.2
- Paragraph 4.14
- Paragraph 4.6

2. ACTION BY THE ASSISTANT COMMISSIONER

The Assistant Commissioner has a discretion as to the procedure to be followed in any Adjudication, and this includes whether or not to hold an Adjudication Hearing. Having considered the Investigation Report, he requested the parties to attend a Review of the case, which was held on 23 November 2023. The Assistant Commissioner was accompanied by his Legal Assessor, and it was attended by both parties together with their legal representatives.

Without expressing any view on the contents of the Investigation Report and although the matter was now one for Adjudication, the Assistant Commissioner asked the parties if they had considered whether or not the complaint was capable of resolution in a manner that

would take account of the Commissioner’s Alternative Action Policy (‘the Policy’)¹. The Assistant Commissioner advised that, should the parties propose any agreed outcome this would require his approval, and would have to be both a proportionate outcome and satisfy the public interest.

Both parties agreed to consider this and to submit to the Assistant Commissioner a written update on their discussions.

On 24 January 2024, both parties submitted a Joint Position paper (see Appendix A) proposing an outcome to dispose of the matter and conclude the Adjudication without the requirement of an Adjudication Hearing.

The Assistant Commissioner carefully considered the Joint Position Paper and acknowledged:

- a. The acceptance by former Councillor Brown of his breaches of the Code at paragraphs:
 - **4.14** *“You must work responsibly and with respect, with others and with employees of councils.”*
 - **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.”*
 - **4.6.** *“You must comply with any request of the Commissioner in connection with an investigation conducted in accordance with the Commissioner’s statutory powers.”*
- b. The detailed content of the paper and the recognition, by former Councillor Brown, of the potential damage to the Council, fellow councillors and the public, following his Facebook Post, which implied “the selection process was political” and not merit based.
- c. The contrition expressed by former Councillor Brown in the paper and his willingness to give apologies, to the Selection Committee and Mr Hannaway, for his conduct.
- d. Former Councillor Brown had quickly taken down the Facebook Page and took steps to ameliorate the damage through contact with local newspapers.

¹ <https://www.nipso.org.uk/sites/default/files/2023-05/FINAL-Alternative-Actions-Policy-launched-on-21-June-2016.pdf>

The Assistant Commissioner notes that the apologies, in the terms proposed in the paper, have been furnished to the persons concerned. The Assistant Commissioner also notes that the Joint Position Paper contains an acknowledgment by former Councillor Brown that the selection process leading to the appointment of Mrs Marie Ward, was both merit based and was not political.

3. DECISION

In coming to his determination, the Acting Commissioner has taken into account that the overriding objective of an Adjudication is to determine a complaint in a manner that is fair, efficient and proportionate. This is also reflected in the Commissioner's Alternative Action Policy. Although this Policy is particularly directed to the possibility of the resolution of a complaint at the Investigation stage, it also provides a useful indication of how a complaint might be resolved, even where, as here, the matter has proceeded to Adjudication.

The purpose of any resolution is to seek a satisfactory outcome without the cost and resource implications of an Adjudication and or an Adjudication Hearing. In the context of the present complaint, it is relevant to note that paragraph 3.1 of the Policy states Alternative Action may be appropriate in certain circumstances, including those set out at sub-paragraphs 3.1 a) and b):

- a) It is the most efficient, effective and proportionate means of resolving a complaint.
- b) A councillor is likely to be found in breach of the Code, but it is not likely that this would result in a significant sanction being provided by the Commissioner i.e. suspension for more than one month or disqualification for any period.

The Acting Commissioner determined as follows:

- a. Former Councillor Brown was elected to Newry, Mourne and Down District Council and his initial 'Declaration of Acceptance of Office' was dated 3 June 2014 and his most recent 'Declaration of Acceptance of Office' was dated 20 May 2019. By signing the declarations, former Councillor Brown affirmed that he had read and would observe the Code.
- b. The Code applied to former Councillor Brown.
- c. Former Councillor Brown admitted that he had breached the Code at:

- Paragraph 4.14
- Paragraph 4.2 and
- Paragraph 4.6

The Assistant Commissioner said former Councillor Brown had admitted breaches of the Code which were serious. He had accepted that his conduct was inappropriate and brought the Council into disrepute. He had, however, put forward a cogent account of how he would seek to remedy that conduct and would make apologies. If the case had proceeded to an Adjudication, it might have warranted a short period of suspension or partial suspension of up to one month for a sitting Councillor, but the Assistant Commissioner would not have considered disqualification.

The Assistant Commissioner said that his consideration of the wider public interest involved the need to act proportionately when seeking a fair and efficient outcome to an Adjudication process, and to reflect this in his Decision. The Assistant Commissioner considered that whilst an Adjudication Hearing was not necessary in this case, he would impose a sanction for former Councillor Brown's breaches of the Code.

The Sanction Guidelines at paragraph 3, state the objectives relevant to determining sanction are:

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

The Assistant Commissioner accepted the admissions by former Councillor Brown of his breaches of the Code. He decided that concluding the Adjudication by imposing a Censure, was an appropriate course of action which would still reflect the public interest in good administration, would uphold and improve the standard of conduct expected of councillors

and would foster public confidence in the ethical standards regime introduced by the 2014 Act.

This is not a case which, in all the circumstances, including former Councillor Brown's cooperation with the Adjudication process, and having considered the Sanctions Guidelines and the body of previous Decisions relating to the Code, would have merited disqualification. Furthermore, as former Councillor Brown was not a sitting Councillor, the sanction of suspension would not have been available in any event. Therefore, the Assistant Commissioner only considered whether to take No Action or to impose a Censure.

No Action – would include an inadvertent failure to comply with the Code. That was not a feature in the conduct of former Councillor Brown in this case and the Assistant Commissioner did not find 'no action' to be an appropriate sanction.

Censure – would generally take the form of criticism of the conduct which constituted or gave rise to a failure to comply with the Code, which might include a failure to comply where the Councillor accepted that the behaviour was inappropriate and had taken clear steps to mitigate the failure.

The Assistant Commissioner carefully considered the balance between the level of seriousness of the breaches and the willingness of former Councillor Brown to seek to fully mitigate his inappropriate conduct. The Sanctions Guidelines at paragraph 3.b) requires that any sanction imposed must also be justified in the wider public interest and should be designed to discourage or prevent any future failures to comply with the Code by the particular Councillor and to discourage similar conduct by other Councillors. The Assistant Commissioner considered that 'censure', in this particular case, would meet that requirement.

In coming to this conclusion, the Assistant Commissioner recognised that Former Councillor Brown had previously been sanctioned by the Commissioner (Marie Anderson) in May 2018, when a period of suspension was imposed after Councillor Brown (as he then was) self-referred to the Commissioner following a 'drink-driving' conviction. The Assistant

Commissioner was satisfied that the facts of the present complaint were markedly different and arose in a wholly different context, and that it was not necessary for him to take into account the previous breach of paragraph 4.2 of the Code in determining the appropriate sanction in this case.

4. SANCTION

The Assistant Commissioner's decision, made under Section 59(3)(c) of Part 9 of the Local Government Act (Northern Ireland) 2014, was to censure former Councillor Brown for his breaches of the Code.

The Assistant Commissioner said it was appropriate for him to express his appreciation to all involved for their diligent work in assisting him towards this outcome and the willingness of former Councillor Brown to accept his breaches and learn from the events. The Assistant Commissioner acknowledged the saving of the time and resources, which would otherwise have been needed for an Adjudication Hearing.

5. LEAVE TO APPEAL

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

Ian Gordon

Assistant Northern Ireland Local Government Commissioner for Standards

12 February 2024

APPENDIX A

Former Councillor Patrick Brown Joint Position Paper

The Deputy Commissioner and the former Councillor are grateful for the time allowed by the Commissioner, to facilitate discussions between the legal representatives. Both the Deputy Commissioner and the former Councillor entirely accept that the future progress and outcome of this Adjudication procedure is a matter for the Commissioner to determine. While recognising this, the former Councillor has taken what may be considered a helpful and constructive step, by indicating that should the Commissioner be amenable to censure, the Former Councillor will accept the following breaches:

- (i) Breaching Rule 4.14 by failing to act with respect to others;
- (ii) Breaching Rule 4.2 by bringing the Council into disrepute;
- (iii) Breaching Rule 4.6 by failing to properly and within time comply with investigation into alleged breaches.

The former Councillor accepts that his actions brought the Council into disrepute and may have given the impression that the selection process was not merit based or appropriate for use. The former Councillor accepts that the selection process was not a political selection and that it is a merit-based process. For the avoidance of doubt, the former Councillor also accepts that the Facebook post he made on 24 June 2019 that implied the selection process was political was inappropriate.

The former Councillor agrees to provide a written apology to the selection panel in the following terms:

“I apologise to the selection panel for undermining their role and suggesting that the panel made a choice of Chief Executive based on political lines. I accept that the selection process was merit based and that my comments were open to alternative interpretation. I, therefore wish to set the record straight and I apologise specifically to the members of the Selection Panel.”

The former Councillor accepts that the email sent to Mr Liam Hannaway on 18 July 2019 was inappropriate in all the circumstances and agrees to provide a written apology to Mr Hannaway for the email and for suggesting that the selection process was a political selection and in the following terms:

“I apologise to Mr Hannaway in relation to the email that I sent to him on 18 July 2019. I accept that this was not appropriate and I apologise for suggesting in that email that the selection process was political. It was not my intention to cause him any hardship or to cause there to be any negative reflection on his role or leadership. My intention in sending this email was to seek a resolution of the issues, however, I accept that by the stage that I emailed Mr Hannaway he had made an allegation to the LGES team about my conduct and asking him to withdraw the complaint was not appropriate. I accept that the selection process was merit based and that my comments were open to alternative interpretation and that these comments to Mr Hannaway were unacceptable. I therefore wish to set the record straight and

I apologise specifically and directly to Mr Hannaway for any undue stress, inconvenience or distress caused."

The former Councillor also undertakes not to breach the Code in the future.

The former Councillor acknowledges that this is not the first occasion on which the former Councillor has come before the Commission, however, he submits that these facts can be differentiated from the previous allegations. The Deputy Commissioner accepts that the present complaint arises in a different context.

In regards to the Facebook post, the former Councillor has explained that he took the post down and took proactive steps to contact local newspapers to ensure that statements were altered and correctly put in the public eye.

The former Councillor agrees, as set out above, to provide a written apology to the selection committee to further cement his position that the selection process was a merit-based scheme.

The breaches and the selection process itself, along with the comments he made about it, stem from 2019, some four and a half years ago now. The former Councillor asks the Commissioner to take into consideration that he has had to deal with the stress and inertia caused by such a lengthy period to determine the issues.

In respect of Mr Hannaway, the former Councillor states that his actions were a genuine attempt to move on and put differences aside but now readily accepts that it was inappropriate and that although that was his intention, this was not the manner in which to do that. The Deputy Commissioner welcomes the former Councillor's recognition of inappropriate conduct and his intention to apologise to both the selection committee and Mr Hannaway.

The former Councillor would like to draw attention to his previous good conduct, years of public service and willingness to learn from these events. The Deputy Commissioner also notes that the former Councillor is no longer a serving Councillor.

The former Councillor would ask that the Commissioner takes into consideration his willingness to accept Censure and the breaches, saving public time and expense in relation to a contested hearing, and would ask that this be reflected in any notice or article on the Commission website.