



Northern Ireland

Local Government

Commissioner for Standards

**Northern Ireland Local Government Code
of Conduct for Councillors:
Alternative Action Policy**

1. Introduction

- 1.1 Part 9 of the Local Government Act (Northern Ireland) 2014 (the 2014 Act) introduced a new ethical standards framework for local government in Northern Ireland. The 2014 Act requires councillors to observe the Northern Ireland Local Government Code of Conduct for Councillors (the Code). The Code was approved by the Assembly on 27 May 2014. The 2014 Act provides for the Northern Ireland Local Government Commissioner for Standards (the Commissioner), to investigate and adjudicate on complaints of alleged breaches of the Code.
- 1.2 Under section 55(2) of the 2014 Act, the Commissioner may take action instead of, or in addition to, conducting an investigation in dealing with a written allegation that there has or may have been a breach of the Code. Such action is referred to in this policy as “Alternative Action”¹.

2. The Purpose of the Alternative Action Policy

- 2.1 The purpose of the Alternative Action policy is to seek a satisfactory resolution of a complaint without the cost and resource implications of an investigation and/or an adjudication. The Alternative Actions outlined in this document are also intended to encourage compliance with the Code of Conduct and to deal with potential breaches of the Code in a proportionate and appropriate manner. For instance, Alternative Action may be appropriate where a complaint has arisen as a result of a breakdown in working relationships between a councillor and a senior office in the Council and such action may assist in restoring working relationships.

3. When Alternative Action may be appropriate

- 3.1 Alternative Action may be appropriate in the following circumstances:
- 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;
 - c) the complaint has met the evidential test at assessment stage, but does not fully meet the criteria contained within the Commissioner’s Public Interest Considerations guidance (which relate to the seriousness of the alleged breach and the cost of an investigation and any adjudication when weighed against the likely sanction). The guidance is available on the Commissioner’s website at www.nipso.org.uk/nilgcs/publications
 - d) The complaint relates to issues of respect and consideration for others and the complainant is also an elected official; and

¹ The Commissioner may delegate her functions in relation to investigations and the taking of Alternative Action to the Deputy Commissioner.

- 3.2 The above is not an exhaustive list and the decision as to whether Alternative Action should be taken instead of or in addition to an investigation will be taken by the Commissioner having regard to the facts and circumstances of every case.
- 3.3 The types of Alternative Action which may be taken by the Commissioner and the circumstances in which they may be applied are set out at Appendix A. The action to be taken in any particular case will be a matter for the discretion of the Commissioner, in all the circumstances of the case and, where appropriate, having sought the views of the complainant and/or councillor where their agreement or participation is required.
- 4. Review of the Alternative Actions Policy**
- 4.1 The Alternative Actions Policy will be reviewed every two years. The first review will take place in May 2018.

**Marie Anderson
NILGSC
21 June 2016**

Action	When this action is likely to be appropriate	Roles and procedures
1. Reminder of Obligations under the Code	<p>This action is likely to be taken where the complaint has not been recommended for investigation, but there remains a concern that, should the conduct complained of persist or escalate, it may give rise to a future breach of the Code. A reminder will be appropriate where the Commissioner considers that it would be likely to reduce the risk of such conduct occurring in the future.</p>	<p>a) The Commissioner will write to the Councillor concerned reminding him/her of the Code’s requirements in relation to the matter complained of and providing any additional advice or guidance considered appropriate.</p>
2. Apology to the Complainant or the Public at large	<p>This action is likely to be taken where the councillor accepts there has been a breach of the Code, or where it is clear that the councillor acted or communicated in the manner indicated in the complaint, but the nature of the breach and/or the particular circumstances of the case is such that it is unlikely to result in a significant sanction (i.e. suspension for more than one month or disqualification for any period).</p>	<p>The apology should reflect the Ombudsman’s guidance on issuing apologies for public service providers which is available at: https://nipso.org.uk/nipso/publications/services-we-offer/</p> <p>a) Following appropriate consultation with the relevant parties, the form and content of the apology will to be approved by the Commissioner.</p> <p>b) Where the Commissioner has approved the form of the apology, the complaint will not be reopened on the basis that the complainant is not content with the apology.</p> <p>c) The manner and forum in which the apology is delivered i.e. whether in private, in the Council Chamber, in the media etc. will depend on the circumstances of the actions/communications giving rise to the complaint and will be determined by the Commissioner.</p> <p>d) Failure to provide a suitable apology or a refusal to provide that apology in the form, manner or form required by the Commissioner will lead to the complaint reverting to the Commissioner for a decision on the next steps to be taken in relation to the complaint, including for example, a decision to begin or resume an investigation.</p>

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3. Rectification	<p>This action is likely to be taken where the Councillor accepts he or she has failed to comply with the Code, but the failure is minor in nature and no adverse consequences for the Council or any other person have resulted from the breach, for example where there has been a minor and/or inadvertent failure to register an interest.</p>	<ul style="list-style-type: none"> a) The Councillor is required to comply with the Code. For example, by registering an interest which had not been previously registered. b) Rectification may be combined with another alternative action, such as a requirement to issue an apology (as at point 2 above).
4. Disclosure to another body	<p>The Commissioner is likely to refer the complaint to another body for action where the other body has greater or equivalent powers to investigate the complaint and/or it has specialist skills or expertise on the issues raised by the complaint.</p> <p>Such referrals will be made in accordance with the Commissioner’s powers under Sections 49 and 51 of and Schedule 7 to the Public Services Ombudsman Act (NI) 2016 (the 2016 Act). For example, under Section 49 of the 2016 Act the Commissioner may make a disclosure to the Information Commissioner where it appears there has been an offence under relevant provisions of the Data Protection Act 1998 or the Freedom of Information Act 2000.</p>	<ul style="list-style-type: none"> a) The Commissioner will make a referral to another body in order for that body to take appropriate action. b) The Commissioner is likely to suspend any investigation while the matter is considered by the body to which the referral has been made. c) When the body to which the matter has been disclosed has evaluated the information and taken the action it considers appropriate, the complaint will revert to the Commissioner for a decision on the way forward.

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5. Training on the Code	<p>This action is likely to be taken where it appears to the Commissioner that the breach has arisen due to a reasonable misinterpretation of the Code or a failure to understand the requirements of the Code.</p>	<ul style="list-style-type: none"> a) The nature of the training required will be determined by the Commissioner based on all the circumstances of the case including whether the councillor has received similar training in the past. b) The training will be arranged by the Council with the agreement of the Chief Executive. Any costs incurred in providing training will be met by the Council. The Commissioner must agree that the training proposed addresses the specific issue which she has identified. c) Failure to attend training will mean that the complaint reverts to the Commissioner for a decision on the way forward.
6. Mediation	<p>This action is likely to be taken where the complaint has resulted from a breakdown in working relationships. On occasion, it may be taken in relation to disputes between councillors and members of the public.</p>	<ul style="list-style-type: none"> a) Mediation will be conducted by a confidential, independent, professional mediation service, to be arranged by the Chief Executive of the relevant Council and agreed by the Commissioner. Costs incurred in providing mediation will be met by the Council. Should the Chief Executive be a party to the complaint and/or the mediation process the arrangements will be made by a senior officer of the Council. b) Both parties must first provide written confirmation to the Commissioner that they agree to participate fully in the mediation process and abide by the outcome of it. c) Should the mediation fail the complaint will revert to the Commissioner for a decision as to how to proceed. The Commissioner has discretion in this regard and may decide to take no further action in relation to a

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<p>6. Mediation continued</p>		<p>complaint where the Commissioner considers that the Councillor complained of had not contributed to the failure of the mediation process.</p> <p>d) parties cannot rely on any information disclosed during the mediation process in any subsequent investigation or adjudication proceeding from the complaint.</p> <p>e) Where the Commissioner recommends mediation but the Councillor declines to participate in the mediation, the Commissioner will consider whether or not to continue the investigation. If the case proceeds to adjudication, the Commissioner may take this refusal into account in determining the level of sanction, if any, applied where there is a finding of a failure to comply with the Code.</p> <p>d) At the conclusion of the mediation the Commissioner will determine what if any further action is required in relation to the complaint.</p>