

Procedures for Adjudication by the Local Government Commissioner for Standards

Purpose

1. This document is a guide to how the Northern Ireland Local Government Commissioner for Standards (**the Commissioner**)¹, will adjudicate on an allegation that a Councillor has failed to comply with the Local Government Code of Conduct for Councillors (**the Code**). Councillors are encouraged to engage fully with this process.

Background

2. Part 9 of the Local Government Act (Northern Ireland) 2014² (**the 2014 Act**) introduced an ethical standards framework for local government based on a mandatory code of conduct for Councillors. The Code came into effect on 28 May 2014 (other than those provisions relating to planning matters which came into force on 1 April 2015).
3. Sections 55 to 59 of the 2014 Act give the Commissioner the authority to investigate, and to adjudicate on, an allegation that a Councillor (or a former Councillor)³ has, or may have, failed to comply with the Code. Copies of the Code (and other relevant publications, including the Commissioner's Guidance on the Code) are available on the Northern Ireland Public Services Ombudsman (**NIPSO**) website at:
<https://www.nipso.org.uk/nilgcs/publications>
4. The Commissioner may investigate cases
 - (1) where a written allegation is received from any person that a Councillor has, or may have, failed to comply with the Code; and

¹ The role of the Northern Ireland Local Government Commissioner for Standards is a statutory function of the Northern Ireland Public Services Ombudsman and the term 'Commissioner' is used throughout this document.

² As amended by section 62 and Schedule 7 of the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act)

³ Any reference to a Councillor includes a former Councillor.

- (2) other cases where the Commissioner considers that a Councillor has, or may have, failed to comply with the Code and which have come to the Commissioner's attention as a result of an investigation under paragraph 4(1).

Investigation and Adjudication are separate processes

5. The investigation and adjudication of allegations of a breach of the Code are dealt with separately. The Commissioner has delegated⁴ to the **Deputy Commissioner** (and to the staff of the Local Government Ethical Standards (**LGES**) Team) the authority to conduct investigations and to report on the outcome of those investigations. The procedures for investigating and reporting on complaints are the subject of separate guidance, which is also available on the NIPSO website.
6. A Protocol⁵ setting out the separate roles and responsibilities of the Deputy Commissioner and of the Commissioner is published on the NIPSO website.
7. The Commissioner has no role in the receipt, assessment or investigation of an allegation of a breach of the Code, and is not involved in a decision by the Deputy Commissioner to request the Commissioner to consider making an adjudication.
8. The purpose of an investigation is to determine which of the following is appropriate:
 - a. there is no evidence of any failure to comply with the Code;
 - b. no action needs to be taken in respect of the matters which are the subject of the investigation; or
 - c. the Commissioner should make an adjudication on the matters which are the subject of the investigation.⁶
9. Instead of, or in addition to, conducting an investigation into an allegation of a breach of the Code, the Deputy Commissioner may, in appropriate circumstances, take alternative action. The policy for Alternative Action is available on the NIPSO website.⁷
10. If the Deputy Commissioner considers that the Commissioner should make an adjudication, the Deputy Commissioner will send the Commissioner an Investigation Report. A copy of the Investigation Report will also be sent to the Councillor and the Clerk of the relevant Council.⁸

⁴ Under the 2016 Act, Schedule 1, article 14(1), "Any function of the Ombudsman may be performed by any member of staff of the Ombudsman authorised by the Ombudsman for that purpose."

⁵ Available on the Commissioner's website at www.nipso.org.uk/nilgcs/publications

⁶Section 55(5) of the 2014 Act

⁷ Section 55(2) of the 2014 Act – www.nipso.org.uk/nilgcs/publications

⁸Section 57(2) of the 2014 Act

Referral from the Deputy Commissioner

11. The Investigation Report will include the Deputy Commissioner's finding of the facts giving rise to the referral, and the Deputy Commissioner's reasoning as to why these facts might be regarded as a failure to comply with the Code, together with relevant supporting evidence. The Investigation Report will also provide information on the date of the Councillor's election, the relevant Council, the Councillor's committee memberships and a note of any appointments to other bodies.

Adjudication

12. An Adjudication will be conducted by the Commissioner or by another suitably qualified person (**an Adjudication Commissioner**), and any function of the Commissioner in relation to the Adjudication process may be performed by an Adjudication Commissioner⁹. Neither the Deputy Commissioner nor any member of staff of the LGES Team may be appointed as an Adjudication Commissioner.
13. The Commissioner will decide whether or not to adjudicate on the matters set out in the Investigation Report. If the decision is not to adjudicate, the Commissioner will provide reasons to the Deputy Commissioner, the Councillor and the Clerk of the relevant Council. Before coming to a decision, the Commissioner may seek additional information from the Deputy Commissioner, the Councillor, the Council, and any other person with an interest in the matter and may enquire as to the consideration of alternative action by the Deputy Commissioner.
14. The Commissioner may, at any stage of the Adjudication process, decide to cease the Adjudication and/or approve an appropriate outcome proposed by the parties. Where an Adjudication is ceased and/or an appropriate outcome of the matter is approved by the Commissioner, a written Decision will be provided in accordance with paragraph 43.
15. The Commissioner, who is the sole decision maker, will be assisted by a Legal Assessor who will provide legal advice and support throughout the Adjudication process.
16. Administrative support for Adjudications is provided by members of the Commissioner's staff who have no involvement in the investigation or referral for Adjudication.
17. The procedure for an Adjudication, including any Adjudication Hearing, will be such as the Commissioner, with the assistance of the Legal Assessor, considers appropriate in the

⁹ Under the 2016 Act, Schedule 1, article 14(2), "Any function of the [Commissioner] may be performed by any other person authorised by the [Commissioner] for that purpose if (a) that other person is suitably qualified to do so, and (b) there are special circumstances which make it proper to do so".

circumstances of each case.¹⁰ These **Adjudication Procedures** are a guide to what will generally apply.

18. The Adjudication process is inquisitorial (rather than adversarial) and the overriding objective in every adjudication is to deal with the matter in an open, fair and proportionate manner, with due regard to the public interest and the rights of the individual Councillor.

19. Adjudication is a three stage process:

1. **Stage 1** - Determination of Facts
2. **Stage 2** - Consideration of Breach of the Code
3. **Stage 3** - Determination of Sanction (if required)

Decision to Adjudicate

20. If the Commissioner decides to adjudicate, the Commissioner will inform the Deputy Commissioner and notify the Councillor in writing of the decision. The Commissioner will also send to the Councillor:

- A Response Form for completion by the Councillor (**'the Councillor Response Form'**)
- The Adjudication Procedures
- The **Sanctions Guidelines**¹¹
- Details of the date, time and other arrangements for an initial **Adjudication Review**

Management of an Adjudication

Adjudication Review

21. An Adjudication Review facilitates the fair and efficient management of the Adjudication, up to and including any Adjudication Hearing, and is held by the Commissioner whenever it is appropriate to do so.

22. An Adjudication Review does not consider or determine the substance of any allegation(s).

¹⁰ Section 56A(3) of the 2014 Act.

¹¹ Available on the Commissioner's website at www.nipso.org.uk/nilgcs/publications

23. Following an Adjudication Review the Commissioner will issue directions (**Directions**) to the Deputy Commissioner and the Councillor setting out and timetabling any steps that are to be taken to ensure the fair and efficient conduct of the Adjudication, and may vary or amend these Directions at any time. The Commissioner may also issue Directions at any time without holding an Adjudication Review.
24. The Deputy Commissioner or the Councillor may request the Commissioner to convene an Adjudication Review, but must provide reasons for their request.
25. An Adjudication Review is private and will not be recorded. It will be conducted in person, by telephone, on a virtual platform or in such other manner as the Commissioner considers appropriate.
26. The following are (non-exhaustive) examples of matters that may be considered at an Adjudication Review, and which may give rise to the issue of Directions:
 - The representation of the Councillor
 - Additional steps to be taken if the Councillor is unrepresented or does not attend any part of the adjudication process
 - A deadline for the return of the Councillor Response Form and any other documents relied upon by the Councillor
 - The consideration of an appropriate outcome of the matter
 - The identification of the facts outlined in the Investigation Report which are agreed or disputed
 - Preliminary legal issues
 - The determination of Stages 1 and 2 of the Adjudication without an Adjudication Hearing
 - Whether the Commissioner should hold an Adjudication Hearing for any part of the process, including Stage 3 (Sanction)
 - A date, time and venue for an Adjudication Hearing
 - Proposed witnesses and Witness Statements
 - The relevance of any proposed witness or other evidence
 - The preparation of documents for an Adjudication Hearing
 - Whether any special arrangements need to be made at an Adjudication Hearing to facilitate the Councillor, a witness or any other person
 - The attendance of witnesses and the order of witness evidence
 - Legal submissions relevant to any stage of the Adjudication
 - The consolidation of adjudications (if two or more allegations have been made in respect of the same or similar alleged or related facts)
 - The time for compliance with any Direction.

Adjudication Hearing

27. An Adjudication Hearing is held in public, unless the Commissioner decides to hold all or any part of it in private. The arrangements for an Adjudication Hearing will be published on the NIPSO website. Members of the public, including the media, will be able to attend the Adjudication Hearing, subject to any direction of the Commissioner. The Adjudication Hearing may be recorded by the Commissioner's staff electronically or by a stenographer appointed by the Commissioner.
28. Stages 1 and 2 of an Adjudication will be determined without an Adjudication Hearing if the Commissioner considers that no further evidence or information is required, or if the Councillor does not dispute the contents of the Investigation Report, or if it is otherwise appropriate to do so. The Commissioner may hold an Adjudication Hearing to determine Stages 1 and 2 if it is considered necessary, proportionate or in the public interest to do so.
29. The Stage 3 determination of Sanction will take place at an Adjudication Hearing unless the Commissioner considers that it would be unnecessary, disproportionate or otherwise not in the public interest to do so.
30. In considering the public interest, or the need for any part of an Adjudication Hearing to be held in private, the Commissioner may take into account the following (by way of example only):
 - Any prejudice to the interest of fairness affecting the Councillor or anyone else concerned
 - Evidenced personal health issues affecting the Councillor or anyone else concerned
 - Issues of personal safety or security where there is evidence of a risk of substantial harm to the Councillor or anyone else concerned
 - A need to maintain confidentiality
 - The transparency of decision making
31. The Commissioner may exclude from an Adjudication Hearing (or any part of it) any person whose conduct has disrupted, or is likely in the Commissioner's opinion to disrupt, the Hearing.
32. The Commissioner may refuse to allow a person to represent (or to continue to represent) the Deputy Commissioner or a Councillor if there are good and sufficient reasons to do so.

33. If a Councillor fails to attend an Adjudication Hearing, either in person and/or by a representative, the Commissioner may adjudicate in their absence, or adjourn the Adjudication Hearing to another date, and/or take other appropriate steps to ensure the progress of the Adjudication.
34. Before adjudicating in the absence of a Councillor, and/or their representative, the Commissioner will consider any written representations (including medical evidence) submitted by or on behalf of the Councillor, together with any other material facts and considerations, including the Councillor's awareness of the arrangements for the Adjudication Hearing.
35. If, at any stage, the Deputy Commissioner or the Councillor wishes to raise a legal issue relevant to the Adjudication, this should be notified in writing to the Commissioner. The Commissioner may convene an Adjudication Review to consider the matter and/or issue Directions as to how and when the legal issue is to be determined.

Stage 1 (Determination of Facts)

36. The Commissioner will determine the Facts on the balance of probabilities. The Commissioner will only consider evidence and other information that is relevant to the matter under adjudication.
37. The Commissioner may take into account any Facts that have been agreed between the Deputy Commissioner and the Councillor, as well as the contents of the Investigation Report, any Witness Statements and any additional documents which have been provided after the decision to adjudicate was made.
38. If the Commissioner holds an Adjudication Hearing to receive oral evidence, every witness permitted to give evidence shall provide in advance a signed and dated Witness Statement. A witness shall give evidence under oath or affirmation, and may be questioned on the contents of their Witness Statement by the Commissioner and the Legal Assessor, and with the permission of the Commissioner by the Councillor and the Deputy Commissioner (or their representatives).
39. The Commissioner may require any person to attend as a witness at an Adjudication Hearing and to answer any questions or produce any documents or other material in their custody or control which relate to any matter in question in the adjudication.¹²

¹² Schedule 7 of the Public Services Ombudsman Act (NI) 2016 extends the power contained in section 31(3) of that Act (to compel witnesses and require the production of documents) to Adjudication Hearings.

Stage 2 (Determination of Breach)

40. Having determined the Facts, the Commissioner will consider at Stage 2 whether or not, on the Facts found, the Councillor has failed to comply with the Code, and will take into account any admission(s) by the Councillor and any submissions received.

Stage 3 (Sanction)

41. If Councillor has breached the Code the Commissioner will determine the appropriate Sanction. Before doing so, the Commissioner will have regard to the Sanctions Guidelines, any mitigating and aggravating factors in the matter, any submissions received from the Deputy Commissioner or the Councillor (including any relevant testimonials or other evidence of character), any previous breach(es) of the Code by the Councillor, and any other relevant Decisions of the Commissioner.
42. The available Sanctions are;
 - (1) To take no action
 - (2) Censure
 - (3) Suspension or Partial Suspension
 - (4) Disqualification

and if a Sanction (3) or (4) is imposed the Commissioner's Decision will state the date on which it comes into effect.

Decision of the Commissioner and Appeal

43. The Commissioner may give an oral decision or summary at the conclusion of any Stage of the Adjudication process, and will in every case issue a written Decision which will set out the Commissioner's findings and reasons. The Decision will be sent to the Councillor, the Deputy Commissioner and to the Chief Executive of the relevant Council, and will be published on the NIPSO website. The Commissioner will also take reasonable steps to inform any person who made any allegation which gave rise to the adjudication of the Commissioner's Decision.
44. If a Councillor is censured, suspended, partially suspended or disqualified, they may seek the permission of the High Court to appeal the Decision.¹³

¹³ Section 59 of the 2014 Act sets out how and to whom notice of the Decision is given or published, and the provisions for an appeal by the Councillor.

Recommendations and Reports

45. Following an adjudication the Commissioner may make recommendations to a Council on any matter relating to the exercise of the Council's functions or the failure to observe the Code. The Commissioner will also send a copy of the recommendations to the Department for Communities, and may provide copies to other public bodies. The Commissioner will specify a date by which the Council should prepare a report to the Department giving details of what action it has taken or proposes to take as a result of the recommendations. The Commissioner may also lay an annual general report (or other reports) before the Northern Ireland Assembly on the performance of the Commissioner's functions under the 2014 Act. The annual general report may include case summaries of adjudication decisions and details of recommendations made.

General

46. Any document required or authorised by the Commissioner to be sent to a Councillor (or any other person) may be sent:
- (1) To the contact address provided by the Deputy Commissioner, the Council or the Councillor by 'signed for' delivery; or
 - (2) Using an e-mail address provided by the Deputy Commissioner, the Council or the Councillor; or
 - (3) In such other manner as the Commissioner directs.

Interim Adjudications¹⁴

47. Where it appears to the Deputy Commissioner in the course of an investigation that there is prima facie evidence that:
- (1) a Councillor has failed to comply with the Code;
 - (2) the nature of the failure is likely to lead to disqualification under section 59(3)(c) of the 2014 Act; and
 - (3) it is in the public interest to suspend or partially suspend that person immediately,

the Deputy Commissioner may send the Commissioner, before the completion of the investigation, an Interim Report including a recommendation that the Councillor should be suspended or partially suspended from being a councillor for a period not exceeding six months or (if shorter) the remainder of their term of office.

¹⁴ Sections 58 and 60 of the 2014 Act set out the statutory provisions for Interim Reports and Decisions on Interim Reports.

48. Should the Commissioner decide to adjudicate, the procedures for an Interim Adjudication (including the arrangements for any Interim Adjudication Hearing) shall be such as the Commissioner considers appropriate in the circumstances of the matter, having regard to the public interest, the rights of the individual Councillor and the generally applicable Adjudication Procedures.
49. If the Commissioner imposes an interim suspension or partial suspension, notice of that decision will be given to the Councillor and the Clerk of the relevant Council. A decision to impose an interim suspension or partial suspension may be reviewed by the Commissioner if it is appropriate to do so. A Councillor may seek the permission of the High Court to appeal an interim suspension or partial suspension.¹⁵
50. A decision to impose an interim suspension or partial suspension does not prevent the Deputy Commissioner from continuing with an investigation and submitting an Investigation Report to the Commissioner in accordance with paragraph 10 and the other provisions of these Adjudication Procedures.

These procedures are effective from 18 October 2024.

¹⁵ See section 60(9) of the 2014 Act.