



Northern Ireland

**Local Government**

**Commissioner for Standards**

Annual Report

**2017 | 2018**

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ANNUAL REPORT  
of the  
Northern Ireland  
Local Government Commissioner for Standards  
2017-18

**Presented to the Assembly pursuant to Part 9  
of the Local Government Act (Northern Ireland) 2014.**

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## Foreword from the Commissioner



**I am pleased to present my second Annual Report as the Northern Ireland Local Government Commissioner for Standards. As Commissioner I have been given the authority to investigate and adjudicate on allegations that councillors have breached the Northern Ireland Local Government Code of Conduct for Councillors (the Code).**

I have delegated the authority to conduct the investigation of those complaints to the Deputy Commissioner and his staff in the Local Government Ethical Standards (LGES) directorate. The delegation of the investigative function is necessary to maintain an appropriate separation between investigations and adjudications.

### Ethical Standards in Local Government

The Code came into effect in 2014, and provides ethical standards and rules for all councillors in Northern Ireland. Its purpose is to ensure good governance and to maintain public trust and confidence in local government.

The ethical standards regime provided for in the Local Government Act (Northern Ireland) 2014 can be described as a 'one stop shop' model. There are a number of discrete regulatory functions to be undertaken by my Office. These are;

- (i) the publication of guidance on the Code;
- (ii) the investigation of written complaints;
- (iii) a power to pursue alternative action instead of, or in addition to, an investigation;
- (iv) a quasi 'own initiative' power to investigate a potential breach from an ongoing investigation;
- (v) the adjudication (including interim adjudication) on alleged breaches and the imposition of a range of sanctions;
- (vi) the power to publish reports;
- (vii) the power to recommend changes in practice to relevant Councils and the Department for Communities (DfC); and
- (viii) oversight of Council's register of interests.

## My Role

My role as Commissioner is to adjudicate on cases which have been investigated and forwarded to me by the Deputy Commissioner. When a matter is referred to me I may decide whether or not to hold an Adjudication Hearing. These are held in public unless there are good reasons to hear the matter in private, for instance due to the need to maintain the privacy of certain information such as medical information. At an Adjudication Hearing, I may decide that there has been no breach of the Code. However, where I conclude that there has been a breach, I can decide to take no action or impose one of the following sanctions:

- Censure
- Suspension, or partial suspension, for a period, up to a maximum of one year; or
- Disqualification for a period, up to a maximum of five years.

Where I have made a determination that there has been a failure to comply with the Code, I will consult a set of sanction guidelines to help me decide on the most appropriate sanction. The guidelines are on my [website](#) and are made available to any councillor coming before an Adjudication Hearing. The decision in each case is a matter for my discretion and will depend on the particular facts and circumstances of the case.

## Promoting compliance with the Code

I recognise that the ethical standards framework introduced in May 2014 presents challenges for Councillors, Councils, and Chief Executives as well as others in local government. It is important therefore that these stakeholders continue to develop their understanding of the Code. My Office has undertaken a number of communication and training initiatives to help achieve this aim.

### Guidance for Councillors

The former Commissioner published guidance on the Code in March 2014. In May 2017 I updated that guidance. It includes:

- a background to the Code, and an overview of the role of my Office in the assessment, investigation and adjudication of complaints
- guidance on when the Code applies
- a councillor's obligations in relation to the 12 principles of conduct
- specific guidance on the application of the Code in relation to planning matters
- examples of cases to help demonstrate how the Code may apply in practice

This publication is available on my website, and I encourage all to take the time to read and understand both it and the Code.

## Social Media Guidance

During this reporting year I also published the 'Guidance for Councillors on Social Media and the Code'. This was in response to research conducted by my Office which examined councillors' use of social media. Over three quarters of respondents stated that they would welcome advice and guidance in this area. The publication was also a response to a number of complaints to my Office which feature a councillor's use of social media.

The publication, which I launched at the National Association of Councillors Annual General Meeting in October 2017, is intended to assist councillors in using social media in a way that complies with the requirements of the Code.

It reminds councillors that when using social media, particular care should be taken of:

- the requirement to respect others
- the requirement not to bring the council or the role of councillor into disrepute by their verbal or written communications
- the requirement to act lawfully
- the rule that a councillor must not to disclose confidential information without the consent of an authorised person
- the obligation for councillors not to make improper use of Council resources

The guidance also includes some practical advice for using social media securely.

## Code of Conduct Information Sessions

Staff from my Office also worked closely during the year with the Northern Ireland Local Government Association (NILGA) to provide a co-ordinated training programme to councillors. The training, delivered in information sessions across council districts, took councillors through the different aspects of the Code of Conduct. Participants were presented with a series of scenarios, some of which were based on cases from across the rest of the United Kingdom.

For each scenario councillors were encouraged to think about which section of the Code applied and whether a 'breach' had occurred. Discussions then followed on how such scenarios might be assessed, investigated, or adjudicated on by my Office.

Feedback provided by the councillors demonstrated that the sessions were very well received.

## Case Summaries

The case summaries outlined in this report also provide useful information on the Code and the investigation and adjudication of complaints.

## Reflections

My aim as Commissioner is to ensure that councillors meet the standards of conduct that the public expect. I believe that the regime established in 2014 provides the right framework to help achieve this aim.

It allows my Office to investigate and adjudicate on complaints, to promote ethical standards amongst councillors, and to improve learning and understanding of the Code through the production of guidance and other initiatives.

These ethical standards arrangements are unique to Northern Ireland and not only help to achieve good governance and encourage good practice, they also result in significant savings to the public purse. I hope and expect that this will continue to be the case.



**Marie Anderson**

Northern Ireland Local Government  
Commissioner for Standards



## Section 1

# Deputy Commissioner's report 2017-18

### How complaints are investigated

The Commissioner has delegated the authority to conduct investigations to the Deputy Commissioner and his staff in the Local Government Ethical Standards Directorate (LGES). The Commissioner therefore has no involvement in the investigation of individual complaints.

The LGES Directorate is a small team comprising a Director of Investigations, two Senior Investigating Officers and an Administrative Officer.

Complaints that a councillor has or may have failed to comply with the Code do not have to be made to the councillor's council. They must be made directly to LGES and must be made in writing. A complaint form is available to help complainants with the process. Anonymous complaints are not normally investigated, as illustrated by the case summary below.

Complainants are asked to provide LGES with as many details as possible, including:

- Their personal details
- Details of who they are complaining about
- What they are complaining about
- Whether they have any evidence to support their complaint, including whether there are any witnesses.

The requirement for supporting evidence at this stage helps to keep vexatious, malicious or frivolous complaints to a minimum.

In 2017-18 the Office received 44 complaints that councillors had breached the Code. There were already 20 complaints ongoing from the previous year, meaning that a total of 64 complaints were assessed or investigated during the year. This compares to a total of 43 for 2016-17.

The majority of the complaints related to councillors behaviour to other people or their obligations as a councillor.

A total of 32 complaints were closed during the year, compared to 23 in the previous year. Just less than half of these were closed at the initial assessment stage, with another nine closed at the assessment stage.

Four complaints which were investigated were closed with the decision that there had been no evidence of a breach of the Code. Only two complaints were referred for Adjudication. The Commissioner concluded that there had been a breach in one of these cases, and applied a censure. The other complaint was closed by Alternative Action.

## CASE SUMMARY

### Anonymous complaint

*An anonymous complaint against a councillor was made via email.*

*A reply was issued by LGES, stating that the complaint could not be considered unless the complainant provided their full name and contact details. A copy of a complaint form and guidance notes were also provided.*

*The complainant responded by including a link to a newspaper article containing coverage of the councillor's actions, but did not provide a name or contact details.*

*A further response to the complainant was issued, stating that although all complaints against councillors are treated very seriously, the Commissioner's guidance states that complaints that have been submitted anonymously would not normally be considered for investigation. This is important because it is a principle of natural justice that an accused person should know their accuser.*

*The complainant was told that they were welcome to call and discuss the issue further.*

*In the absence of a response, the complaint was closed.*

All complaints are assessed by LGES. There are two stages to this process:

- **Can we investigate?** Is there a complaint in writing against a named councillor and does that complaint relate to conduct covered by the Code?
- **Should we investigate?** Is there evidence of conduct which, if proven, indicates a breach of the Code and would an investigation be in the public interest?

Investigators also need to consider a number of factors when deciding whether a complaint should be referred for investigation. The more serious the alleged breach the more likely it is that an investigation is required. Another factor would be whether an investigation, and possible adjudication, would be proportionate, especially when weighed against any action or likely sanction.

LGES' Key Performance Indicators state that each complaint should be assessed within 4 weeks to determine if an investigation is warranted. In 2017-18 this KPI was met in 97% of complaints.

As required by the 2014 Act, all LGES investigations are carried out in private. This is necessary to protect the reputation of those complained of, the privacy of witnesses and the integrity of the investigation.

The investigation process also needs to be fair and transparent. This means that councillors are made aware of the allegations against them at the outset, as well as the name of the complainant(s). Fair process also requires that councillors or their representatives are afforded an opportunity, at each stage of the process, to make representations to LGES and to provide evidence to the investigation.

Where the outcome of an investigation is that the Commissioner should adjudicate on the matter investigated, councillors have an opportunity to comment on the draft investigation report prior to the conclusion of the investigation and to have those comments considered before the report is finalised.

The investigation process also needs to be timely. The time taken to complete an investigation is dependent on a number of factors, including the complexity of the complaint, the availability and timely submission of relevant evidence, and the extent to which the councillor and other relevant witnesses co-operate with the investigation

LGES aim to complete the investigation of a complaint within 48 weeks of the date the councillor and the complainant were notified of the decision to conduct an investigation. In 2017-18 this key performance indicator was met in 73% of complaints investigated.

The time taken to complete investigations will be reviewed in 2018-19.

## CASE SUMMARIES

### Councillor's comments not a breach of the Code

A councillor was alleged to have made comments about a terrorist incident from the 1980s. The complainant stated that he found the comments offensive, and that he believed the councillor had brought the council into disrepute. He also alleged that the councillor had breached the Code's principles of 'Respect' and 'Promoting Good Relationships'.

As evidence, the complainant provided a copy of a newspaper article and reference to a council meeting at which the councillor spoke.

In considering whether the councillor's comments brought the council into disrepute, the Director of Investigations considered the Commissioner's Guidance on the NI Local Government Code of Conduct for Councillors which states that the test to be applied in these cases is whether a member of the public would consider that conduct as having brought the councillor's position, or the council, into disrepute.

The Director of Investigations did not consider that a member of the public who knew all the relevant facts would reasonably consider the alleged comments to have brought the council into disrepute. While the comments would be poorly regarded by many sections of the community, in the Director of Investigations view this was not sufficient to constitute a breach of the disrepute provision.

In terms of the respect provision, the assessment also addressed the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights (ECHR).

Whilst freedom of expression has been recognised by the European courts as important to everyone, they have also recognised that political expression enjoys "enhanced status" under Article 10 of the ECHR. This protection applies to all levels of politics, including local politics. Article 10 protects not only the substance of what was said, but also the form in which it was conveyed. In a political context, the immoderate, offensive, exaggerated and aggressive may be tolerated where it would not otherwise be.

The Director of Investigations was satisfied in this case that the councillor's alleged comments attracted "enhanced protection" under Article 10 of the European Convention on Human Rights, and did not amount to a personal attack against an identifiable individual or group of individuals.

Based on the evidence provided it was decided that there had been no breach of the Code.

**Complaint closed at Assessment stage**

*A complainant alleged that a councillor had referred to him as a 'moron' in a Facebook post. The complainant described this as disgusting, totally inappropriate and disrespectful.*

*The Respect principles of the Code state that councillors must 'show respect and consideration for others', and that 'rude and offensive behaviour may lower the public's regard for, and confidence in, councillors and councils.'*

*The post was reviewed by the LGES Directorate.*

*It looked at the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights.*

*In the political context, Article 10 protects not only the substance of what is said, but also the form in which it is conveyed. Given the enhanced level of protection afforded to them in this area, politicians in turn are subject to wider limits of acceptable criticism and are required to have 'thicker skins' and have more tolerance than ordinary citizens.*

*Having considered these issues, and the context in which the comment was made, it was decided that the councillor's remarks, even if disrespectful, were protected under Article 10. As the councillor's conduct was therefore not considered to have been a potential breach of the Code, the complaint was not accepted for investigation.*

**Alternative Actions**

The purpose of the Alternative Actions 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 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.

Alternative Action may be appropriate where it is the most efficient, effective and proportionate means of resolving a complaint, or where a councillor is likely to be found in breach of the Code but it is not likely that this would result in any action or significant sanction.

The action to be taken in any particular case will be a matter for the discretion of the Deputy Commissioner.

## Decision following investigation

The purpose of an investigation, as set out at section 55(5) of the 2014 Act, is to determine which of the following three findings is appropriate:

- a. that there is no evidence of any failure to comply with the Code;
- b. that no action needs to be taken in respect of the matters which are the subject of the investigation;
- c. that the Commissioner should make an adjudication on the matters which are the subject of the investigation.

Where the Deputy Commissioner believes it would be appropriate for the Commissioner to adjudicate, he will make a referral to her. Where the Commissioner decides that she should make an adjudication, she will then give the councillor notice of the intention to hold an Adjudication Hearing.

The cases referred to the Commissioner by the Deputy Commissioner can be found on the [Hearings](#) section of the website.

## Adjudication Hearing

Prior to an Adjudication Hearing the Commissioner may hold a pre-adjudication review meeting. This is to consider procedural matters such as the submission of legal arguments and agreed facts. The purpose of this meeting is to expedite the hearing. An example of a case closed at this stage can be found in the summary on page 15.

At a full Adjudication Hearing the Deputy Commissioner or his representative will be invited to make submissions as to why, on the facts found, the Commissioner should decide that the councillor has failed to comply with the Code. The councillor or their representative will be given the opportunity of responding to those submissions.

The Commissioner will determine whether there has been a failure to comply with the Code. Where she finds that there has been a breach, she will decide that either;

- no action should be taken
- the councillor should be censured, which may involve the Commissioner issuing a warning as to the councillor's future conduct
- the councillor should be suspended, or partially suspended for a period not exceeding one year
- the councillor should be disqualified from being councillor for a period not exceeding five years.

In arriving at a decision on sanction the Commissioner must apply the Sanction Guidelines.

## CASE SUMMARY

### Councillor accepts failure to comply with Code's rules over lobbying

*A complaint was made that Councillor Andrew Girvin (Lisburn and Castlereagh City Council) breached the sections of the Code of Conduct relating to lobbying.*

*The Deputy Commissioner's report into the complaint stated that Councillor Girvin had received a request to attend a meeting with a representative of a potential planning applicant. However, rather than referring the request to the appropriate planning officer as required by the Code, the councillor attended the meeting with the representative alone. He also subsequently failed to report the meeting to the planning officer and made no record of what was discussed.*

*The Deputy Commissioner's report therefore concluded that the councillor had breached the Code.*

*At a pre-adjudication hearing it was agreed that further time should be spent on exploring an alternative resolution of the complaint.*

*Councillor Girvin accepted that he had failed to comply with the Code, but stated that this was because of a reasonable misinterpretation of its specific requirements in relation to lobbying. He also stated that he had been unable to attend the Council's Planning Guidance Training which had covered interpretation of the Code.*

*It was decided that 'Alternative Action' was an appropriate way of concluding this case. Councillor Girvin therefore agreed to attend any training determined by the Commissioner and committed to comply with the Code and associated guidance in his future conduct.*

## Recommendation for Training

Subsequent to this case, the Commissioner recommended to both Lisburn and Castlereagh City Council, and the Department for Communities, that mandatory training on planning matters should be provided for all members of planning committees.

### Councillor censured over breach of 'Respect' principle

*The Chief Executive of Causeway Coast and Glens Borough Council complained about the conduct of Councillor Sean McGlinchey. The complaint related to a meeting in September 2015 at which the councillor criticised a council official.*

*An investigation by the Deputy Commissioner concluded that there was enough evidence of a breach of the 'Respect Principle' of the Code for the matter to be referred for an Adjudication Hearing.*

*The Acting Commissioner heard that prior to the meeting in question, Councillor McGlinchey had asked a council official for money to fund a community event in Dungiven.*

*At the meeting three weeks later Councillor McGlinchey criticised how the official had dealt with his request.*

*The Acting Commissioner was told that Councillor McGlinchey spoke with a raised voice and in an aggressive tone, despite clear indications from the Chair that his comments were not in order. He also refused to accept an invitation to withdraw his comments even though the Chief Executive had by this point reminded members that complaints about council officials should be directed to him.*

*Responding, the councillor did not dispute that he had made the remarks. However he stated that the council official had provided him with no help or assistance in relation to his request and that he believed the official's attitude was unacceptable.*

*The Acting Commissioner considered the section of the Code which deals with behaviour towards other people. This section advises councillors 'You must work responsibly and with respect, with others and with employees of councils.' He concluded that there had been a breach of this aspect of the Code.*

*In deciding on a sanction he noted that the official, who was at the meeting, had been embarrassed by the public nature of the remarks and had no opportunity to explain to the other members the steps he had taken to assist Councillor McGlinchey or to defend his reputation. He also noted that the councillor is a long serving councillor who had been aware of the Code and the need for respect for others.*

*In mitigation, the Acting Commissioner noted the councillor had recognised that he had failed to comply with the Code, that there had been no other complaints of a similar nature against him, and that he had apologised privately to the official.*

*The Acting Commissioner noted that the main purpose of a sanction is the preservation of public confidence in local government. After considering all the sanctions available to him, he considered that the most appropriate sanction in this case was for the councillor to be issued with a Censure.*



## Section Two Statistical Analysis

Caseload	2017-18	2016-17	2015-16	2014-15
Enquiries	44	11	8	4
Complaints ongoing from previous year	20	9	9	N/A
Written Complaints received in year	44	34	33	14
Total Complaints under assessment/ investigation in year	64	43	42	14

### Closed Cases

Closed at Initial Assessment stage "can we investigate?"	15	2	13	3
Closed at Assessment stage "should we investigate?"	9	15	16	2
Closed at Investigation stage -no breach	4	2	3	0
Closed by Alternative Action at investigation	1	2	0	0
Closed at Adjudication – no breach	0	0	0	0
Closed at Adjudication – alternative action	1			
Closed at Adjudication - breach	1	2	0	0
Complaint Withdrawn	1	0	1	0
<b>Total cases closed</b>	<b>32</b>	<b>23</b>	<b>33</b>	<b>5</b>

Written Complaints Received – by Basis of Complaint	2017-18 Ytd	2016-17	2015-16	2014-15
Obligations as a Councillor <i>(requirement to act lawfully and not bring council/position of councillor into disrepute)</i>	24	19	23	13
Behaviour towards other people <i>(requirement to show respect and consideration for others)</i>	25	15	18	10
Use of Position	1	2	2	1
Disclosure of Information	1	7	1	3
Decision-making	1	1	0	3
Use of Council Resources	0	0	5	0
Registration of Interests	4	3	0	0
Disclosure & Declaration of Interests	9	6	0	0
Lobbying and access to Councillors	1	3	0	0
Planning matters	2	2	0	0
<b>Total</b>	<b>68</b>	<b>58</b>	<b>49</b>	<b>30</b>

# greater than the number of complaints as some complaints allege more than one breach

Written Complaints Received - by Council	2017-18 Ytd	2016-17	2015-16	2014-15	Total since 27/5/14
Antrim and Newtownabbey	3	6	2	2	13
Mid and East Antrim	1	2	2	3	8
Armagh, Banbridge and Craigavon	4	0	1	4	9
Belfast	20	11	4	1	36
Causeway Coast and Glens	1	3	6	0	10
Derry and Strabane	0	1	6	2	9
Fermanagh and Omagh	4	2	2	0	8
Mid Ulster	2	0	3	0	5
Newry, Mourne and Down	2	3	4	2	11
North Down and Ards	3	4	2	0	9
Lisburn and Castlereagh	4	2	1	0	7
<b>Total</b>	<b>44</b>	<b>34</b>	<b>33</b>	<b>14</b>	<b>125</b>

## Section Three

### Funding and Expenditure in 2017-18

The functions of the Northern Ireland Local Government Commissioner for Standards include the conduct of investigations of alleged breaches of the Local Government Code of Conduct for Councillors, followed where appropriate by adjudications and High Court Appeals. Also included is the development and review of related guidance and procedures and the delivery of training and awareness sessions with Local Councils and the Councillor community. These functions are collectively termed "Local Government Ethical Standards" (LGES). LGES is funded from a separately identified portion of the overall annual budget for the Northern Ireland Public Services Ombudsman (NIPSO).

The LGES budget is proactively managed over the course of each financial year to ensure that any emerging funding pressures are identified and addressed. Similarly, where reduced requirements arise, under established arrangements with the Department for Communities (DfC), any such amounts are released back to the Department of Finance by NIPSO in accordance with normal in-year financial monitoring procedures. Where applicable a final end of year adjustment is also returned directly to DfC. In either case the amounts returned are made available for redeployment by DfC, thus ensuring that any unspent amounts are utilised elsewhere across Local Government.

The following summarises the audited expenditure on LGES during 2017-18 and 2016-17 as reported in NIPSO's Annual report and Accounts:

(All £k)	2017-18	2016-17
Total Expenditure	287	291

# Notes

NORTHERN IRELAND LOCAL GOVERNMENT COMMISSIONER FOR STANDARDS ANNUAL REPORT 2017-2018



# Notes





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