



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (NI) 2014

In the matter of Councillor Padraig McShane (Causeway Coast & Glens Borough Council)

Ref: C00078

Decision of the Northern Ireland Local Government Commissioner for Standards on Stages 1, 2 & 3 of the Adjudication Hearing process by Katrin Shaw, Assistant Commissioner.

The Northern Ireland Local Government Commissioner for Standards, Ms Margaret Kelly, appointed Katrin Shaw as Assistant Local Government Commissioner (the Assistant Commissioner) in relation to the Adjudication Hearing process in respect of this complaint against Councillor Padraig McShane. Ms Shaw was assisted by Mr Michael Wilson, Solicitor, Legal Assessor.

By virtue of section 55(1)(a) of the Local Government Act (NI) 2014, the Commissioner may investigate a written allegation made by any person that a Councillor (or former Councillor) has failed, or may have failed, to comply with the Northern Ireland Local Government Code of conduct for Councillors ('the Code').

1. COMPLAINT

On 14 July 2016, the Northern Ireland Local Government Commissioner for Standards received a complaint from Alderman John Finlay who alleged that Councillor McShane had been involved in a protest at Altananam Park, Ballycastle, Co Antrim, on 12 July 2016, in respect of an Orange Parade which marched through the town on that day.

He complained that the 'authorities' (Parades Commission) had not received the required notification in respect of the protest. Alderman Finlay complained that Councillor McShane had been involved in '*outrageous and provocative behaviour*' at both Altananam Park and the Diamond areas of Ballycastle and added that he (Councillor McShane) had been arrested

by police in the Diamond area of Ballycastle on that date, after confronting a number of bandsmen. This had been widely reported in the media.

Alderman Finlay's complaint was received prior to Councillor McShane having been convicted of any offence and was therefore placed on hold, by the former Deputy Commissioner, pending the outcome to any criminal proceedings.

The allegation was investigated by Mrs Michaela McAleer as the Acting Deputy Commissioner for the Local Government Ethical Standards (LGES) Directorate of the Northern Ireland Ombudsman's Office. The Assistant Commissioner had no role in the receipt, assessment or investigation of a complaint.

The Acting Deputy Commissioner submitted a report, dated 18 March 2022, to the Assistant Commissioner in accordance with sections 55 and 56 of Part 9 of the Local Government Act (Northern Ireland) 2014.

The Report considered that there may have been a failure by Councillor McShane to comply with Paragraph 4.2 of the Code:

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.

The Assistant Commissioner accepted the matter for Adjudication on 18 May 2022.

2. STAGE 1 –FINDINGS OF FACT

Background:

On 27 October 2022 the Assistant Commissioner held a Pre-Hearing Review¹ and issued Directions to enable the efficient progression of this Adjudication. On that date Counsel instructed on behalf of the Acting Deputy Commissioner confirmed to the Assistant Commissioner that he was agreeable to Stages 1 and 2 of the Adjudication process being conducted on the papers in accordance with paragraphs 25 to 27 of the Adjudication Procedures. On 4 November 2022 Councillor McShane confirmed his agreement to this process. The Assistant Commissioner therefore determined the Facts (Stage1) and also determined that Councillor McShane has breached the Code of Conduct for Councillors (Stage 2) on the following basis.

Determination of Facts

The following facts were obtained from the Investigation Report of the Acting Deputy Northern Ireland Local Government Commissioner for Standards (the Acting Deputy Commissioner) dated 18 March 2022, Councillor Padraig McShane's Response Form dated 31 July 2022 and other information provided by the parties to the Assistant Commissioner.

¹ A Pre-Hearing Adjudication Review is a private administrative meeting conducted by the Commissioner for the ongoing management of the matter up to and including the Hearing, but it does not consider or determine the substance of a complaint. Its purpose is to secure the fair and efficient conduct of the adjudication.

1 Facts

- 1.1 On 12 July 2016, Councillor McShane was an elected member of Causeway Coast and Glens Borough Council.
- 1.2 Councillor McShane had previously signed a 'Declaration of Acceptance of Office' on 7 June 2014 in which he agreed to read and observe the Code of Conduct for Councillors ('the Code')
- 1.3 Councillor McShane did not stand for election for the position of councillor following the local government elections held on 2 May 2019.
- 1.4 Councillor McShane was co-opted to the Council on 21 October 2019 following the resignation of Councillor Ambrose Laverty.
- 1.5 Councillor McShane was arrested in the Diamond area of Ballycastle, Co Antrim on 12 July 2016 on suspicion of assault on police, resisting arrest and disorderly behaviour. Prior to his arrest Councillor McShane had been involved in a protest at Altananam Park, Ballycastle in respect of an Orange Order Parade which marched through the town on that day.
- 1.6 On 16 May 2017, Councillor McShane was convicted of the following offences and on 30 August 2017 he received the following sentences at Ballymena Magistrates Court:
 - 1.6.1 Assault on police constable, contrary to Section 66(1) of the Police (Northern Ireland) Act 1998 -
Suspended sentence of imprisonment for 4 months; suspended for 3 years.
 - 1.6.2 Resisting police, contrary to Section 66(1) of the Police (Northern Ireland) Act 1998
Suspended sentence of imprisonment for 2 months; suspended for 3 years
 - 1.6.3 Disorderly behaviour in a public place, contrary to Article 18(1)(a) of the Public Order (Northern Ireland) Order 1987.
Suspended sentence of imprisonment for 2 months; suspended for 3 years.
 - 1.6.4 Organising an un-notified protest meeting, in respect of which the requirements of section 7 of the Public Processions (Northern Ireland) Act 1998 as to notice had not been satisfied, contrary to Section 7(6) of the Public Processions (Northern Ireland) Act 1998.
Suspended sentence of imprisonment for 2 months; suspended for 3 years.
 - 1.6.5 Taking part in a protest meeting in respect of which the requirements of section 7 of the Public Processions (Northern Ireland) Act 1998 as to notice had not been satisfied, contrary to section 7(6)(a) of the Public Processions (Northern Ireland) Act 1998.
Suspended sentence of imprisonment for 1 month; suspended for 3 years.
- 1.7 On 11 June 2018, Councillor McShane's appeal against his convictions and sentences were determined.

The following convictions were **overturned on appeal**, with the orders of the Magistrates Court in relation to sentencing being reversed:

- 1.7.1 Assault on police constable, contrary to Section 66(1) of the Police (Northern Ireland) Act 1998
Appeal allowed; the order of the Magistrates Court was reversed, and the complaint was dismissed.
- 1.7.2 Organising an un-notified protest meeting, in respect of which the requirements of section 7 of the Public Processions (Northern Ireland) Act 1998 as to notice had not been satisfied, contrary to Section 7(6) of the Public Processions (Northern Ireland) Act 1998.
Appeal allowed; the order of the Magistrates Court was reversed, and the complaint was dismissed.

The following convictions were **affirmed on appeal**, with the orders of the Magistrates Court in relation to sentencing being varied in each case:

- 1.7.3 Resisting police, contrary to Section 66(1) of the Police (Northern Ireland) Act 1998
The suspended sentence of imprisonment for 4 months was varied to a fine of £100.
 - 1.7.4 Disorderly behaviour in a public place, contrary to Article 18(1)(a) of the Public Order (Northern Ireland) Order 1987.
The suspended sentence of imprisonment for 2 months was varied to a conditional discharge.
 - 1.7.5 Taking part in a protest meeting in respect of which the requirements of section 7 of the Public Processions (Northern Ireland) Act 1998 as to notice had not been satisfied, contrary to section 7(6)(a) of the Public Processions (Northern Ireland) Act 1998.
The suspended sentence of imprisonment for 1 month was varied to a fine of £100.
- 1.8 A number of media articles covered Councillor McShane's arrest, conviction and his subsequent appeal, noting Councillor McShane's position as an independent councillor on Causeway Coast and Glens Borough Council.
- 1.8.1 An article from the BBC news website from 13 July 2016 refers Councillor McShane having been released on police bail after being arrested during an Orange Order parade on 12 July 2016.
 - 1.8.2 A BBC Northern Ireland news article dated 16 May 2017 refers to Councillor McShane's position as a member of the Council and his conviction.
 - 1.8.3 An Irish News article, dated 16 May 2017 referencing his conviction.
 - 1.8.4 A news article from ballymenadaily.com of June 2018 includes details of Councillor McShane's appeal against conviction and sentence hearing on 11 June 2018.
 - 1.8.5 A Ballycastle Chronicle article dated 21 June 2018 referring to the outcome of the appeal hearing.

STAGE 2 of the Adjudication Hearing – the Assistant Commissioner’s decision on whether there had been a breach of the Code

The Assistant Commissioner, having established the Facts and considered all of the evidence before her, found as follows:

1. The Code applied to Councillor McShane.
2. The role of the Assistant Commissioner was to determine whether, on the balance of probabilities, a breach of the Code has or has not occurred.
3. Following Councillor McShane’s conviction and subsequent appeal, he stood convicted of the offences of resisting police (in respect of which he was fined £100), disorderly behaviour in a public place (in respect of which he received a conditional discharge); and taking part in an un-notified protest meeting (in respect of which he was fined £100).
4. The Assistant Commissioner was satisfied that, on the facts found, and noting the successful appeal by Councillor McShane against his conviction for organising an un-notified protest meeting, there was no evidence that Councillor McShane was acting in his capacity as a councillor when the offences were committed.
5. In concluding her decision on the failure to comply with the Code, the Assistant Commissioner has taken into account Paragraph 4.2 of the Code which states that:

‘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.’

6. She also considered the Guidance on the Code and in particular paragraph 4.5.3 which states:

‘As a Councillor, your actions and behaviour are subject to a higher level of expectation and scrutiny than those of other members of the public. Therefore, your actions – in either your public life or your private life – have the potential to adversely impact on your position as a Councillor or your Council. Dishonest and deceitful behaviour or conduct that results in a criminal conviction, such as a conviction for fraud or assault, even where such conduct occurs in your private life, could reasonably be regarded as bringing your position as Councillor, or your Council, into disrepute.’

7. Also of relevance is paragraph 4.5.4 of the Guidance which says:

‘When considering whether a councillor’s conduct is such that it could reasonably be regarded as bringing your position, or your Council, into disrepute, I will consider:

- *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.’*

8. Having considered the facts and, in particular, the convictions which were affirmed on appeal (but with reduced sentences) as well as the media attention to these convictions which included reference to Councillor McShane’s role as a member of Causeway Coast and Glens Borough Council, the Assistant Commissioner considered that a member of the public, in possession of these facts, would reasonably consider that, although she had determined that he was not acting in his capacity as a Councillor in relation to matters giving rise to the convictions, nonetheless his conduct was such that it brought his position as a councillor into disrepute. The Assistant Commissioner was satisfied therefore that Councillor McShane had breached paragraph 4.2 of the Code. The Assistant Commissioner was also satisfied that Councillor McShane’s convictions were of a personal nature and, as such, his actions had not brought his Council into disrepute.

STAGE 3 – SANCTION

Having found that Councillor McShane had breached paragraph 4.2 of the Code, in accordance with Stage 3 of the Adjudication process, the Assistant Commissioner made arrangements for an Adjudication hearing to take place solely to determine sanction.

22 February 2023

A Hearing took place on 22 February 2023, during which Councillor McShane’s solicitor appeared briefly at the Hearing. As the solicitor could not attend for the duration of the Hearing, the Acting Commissioner proceeded with the hearing only to the extent that the Deputy Commissioner’s legal representative outlined his submissions on sanction (which had previously been provided in writing to Councillor McShane).

The Deputy Commissioner made the following submissions on sanction:

Antecedents on part of Respondent

Councillor McShane, had a history of breaching the Code, namely case C0030 involving breach of paragraphs 4.6, 4.16(a), 4.18(b) and (e) of the Code and for which a sanction of suspension for a period of 3 months was imposed, effective from 28 November 2016. The conduct constituting these breaches occurred on 18 June 2015.

Aggravating and Mitigating Features in present case

In terms of aggravating and mitigating factors relevant to sanction, page 9 of the Sanctions Guidelines, Appendix A, headed: ‘Factors that the Commissioner may take into account when determining the appropriate sanction’ provided inexhaustive but useful guidance.

That the applicability and weight of the factors outlined was a matter for the Assistant Commissioner's discretion. Other factors may be taken into account by the Assistant Commissioner in reaching her determination.

Mitigating Factors:

i) Co-operation with the investigation and the Adjudication Hearing
Councillor McShane had ultimately engaged with the process, paragraph 21 et seq of the Acting Deputy Commissioner's Report of the 18 March 2022 refers.

ii) Substantiated evidence of compliance with the Code since the events giving rise to the adjudication

There have been no subsequent alleged breaches of the code and therefore it may be said that Councillor McShane has complied with the code since the commission of the index breaches which admittedly are now of some vintage.

iii) Provocation

According to Councillor McShane's version of events, the criminal appeal court (which is not a court of record) accepted that there had been a degree of provocation during the course of events which grounded Councillor McShane's three convictions. This is referred to as 'extreme provocation' and in particular, reference is made to an allegation that Councillor McShane was 'spat at' on the date in question. The Deputy Commissioner does not seek to gainsay this contention.

iv) Other:

Councillor McShane had contended that he was the member of council who reported 'misconduct identified in the extraordinary audit' which has resulted in an 'action plan' and that as such 'I would like to see this important work through to its conclusion. I feel the public would be best served in that regard also'. It was not suggested by Councillor McShane that the success of 'the action plan' was contingent on his involvement, nor that it would cease to continue or exist in the absence of Councillor McShane.

It was not clear to the Deputy Commissioner whether this was being submitted as a point in mitigation, but where such a contention is made, it was a matter for the Assistant Commissioner's consideration as to whether they provide additional evidence that should be taken into account when deciding on mitigation.

Likewise Councillor McShane has asserted that "over six and a half years ago [since the breach] ... there has been no further incidents. I have facilitated engagement between protestors and loyalist band members in the interim to ensure potential issues can be dealt with before they arise. I've enjoyed the support of a recognised peace group in a tripartite arrangement that has proved largely successful".

Similar to the last point, if, as it appeared, this was being submitted as a point in mitigation, it was a matter for the Assistant Commissioner's consideration as to whether this provided additional evidence that should be taken into account when deciding on mitigation.

Aggravating Factors

i) Repeated failures to comply with the Code

This is the second occasion on which the councillor has been found to have breached the code.

ii) An intentional failure to comply with the Code

Councillor McShane would have been aware that by committing the criminal offences, for which he was convicted, he was also breaching the terms of the code. In the said knowledge, he nonetheless proceeded to act as he did.

iii) Failing to heed appropriate advice or warnings, or previous findings of a failure to follow the provisions of the Code -

There was a degree of overlap between this aggravating feature and that cited at paragraph 6 i) supra, however it was a further and distinct failing on the part of Councillor McShane to fail to learn from his previous breach. Indeed, it was submitted that the instant breach is more serious and more grave than the previous breach, the instant breach involving conduct which is simultaneously criminal and a breach of the code, rather than simply confined to the latter.

Sanction.

The Deputy Commissioner submitted that the Assistant Commissioner would be aware of the objectives of any decision on Sanction, outlined in paragraph 3 of the Sanctions Guidelines. It was submitted that an important factor in this case was the protection of the public interest in terms of public confidence in the institution of local government, through those democratically elected to represent constituents. The legitimate aim being pursued by the Code is to provide for and secure the high standards required from elected Councillors.

The following submissions were made cognisant of, and subject to, the caveat that the question of Sanction was a matter for the Assistant Commissioner in the exercise of her discretion. The Sanctions Guidelines set out the options open to the Acting Commissioner in ascending order of severity:

a. No action

b. Censure- in such terms as the Assistant Commissioner thinks is appropriate

c. Partial suspension- for such a period as the Assistant Commissioner thinks is appropriate but not exceeding one year

d. Suspension- for such a period as the Assistant Commissioner thinks is appropriate but not exceeding one year

e. Disqualification- for such a period that the Assistant Commissioner thinks appropriate but not exceeding five years.

Dealing with each in order:

No Action - it was submitted that 'no action' was not a suitable outcome to these proceedings, given the deliberate nature of the conduct which has given rise to the Assistant

Commissioner's determination on breach of the Code. The conduct was not an inadvertent failure to comply with the Code. Rather this was conduct that was a result of the councillor's own actions in committing three separate criminal offences.

Censure - It was respectfully submitted that Councillor McShane's conduct was not a 'minor failure' as envisaged in paragraph 9 of the Sanctions Guidelines and therefore this would not be an appropriate measure.

Partial Suspension - This provision appeared designed to meet circumstances in which a Councillor's conduct was such that it was limited to a particular activity or section of council business from which the Councillor could be easily extracted. The conduct involved in this case did not occur in an official capacity and therefore was not apposite, rather it involved criminal behaviour for which Councillor McShane was convicted by a criminal court to the very high standard of proof required. It was submitted partial suspension would not be an appropriate punishment for the instant facts.

Suspension - Having determined a breach of the Code of Conduct by Councillor McShane, specifically that there has been conduct which brought Councillor McShane's position as a councillor into disrepute, then it followed as per paragraph 16(a) that a suspension for not less than one month would be a disposal available to the Assistant Commissioner.

In considering an appropriate sanction, it was noteworthy that in cases within the jurisdiction of the ethical framework, where the impugned conduct was found to be criminal conduct, without exception either a suspension or disqualification was imposed. The Assistant Commissioner was entitled to consider the level of sanction imposed by the criminal court as providing some context of the seriousness with which the offence should be viewed. Every precedent case was of course fact specific but the following cases were considered to be notable;

Criminal conviction cases:

Patrick Clarke case C00035. Disqualification for 3 years imposed. Convicted of Sexual Assault, Fraud, Criminal Damage and Possession of offensive weapon.

Patrick Brown case C00158. Suspension for 6 months upheld on appeal. Drink Driving conviction.

Thomas Hogg case C00294/296. Suspension for 5 months imposed. Drink Driving conviction.

Derek Hussey case C00308. Disqualification for 15 months imposed. Drink Driving, Careless Driving and Failing to report an accident convictions. Third conviction for drink driving, previous in 2011.

Brian Duffin case C00324. Disqualification for 5 years imposed. Sexual Assault conviction.

Ian Stevenson case C00356. Disqualification for 4 years imposed. Sexual Assault conviction. Imposed on 28 June 2021 and would run from 28 June 2021 until 30 April 2025.

Continued breaches of the code:

In the case of *Councillor Westerman APW/002/2003/CT* the Adjudication Panel for Wales imposed a sanction of six months suspension for a breach of the Welsh Code for the criminal offence of cultivation and possession of cannabis (for personal use) contrary to the Misuse of Drugs Act 1971, which was a second offence.

Having considered the forgoing, the Deputy Commissioner therefore recommended a period of suspension in relation to the breach of the Code noted.

Disqualification - On that basis it was submitted that the Assistant Commissioner may have wished to consider whether the conduct was of such gravity as to warrant disqualification. Page 5 paragraph 19 of the Sanctions Guidelines where relevant states: 'Disqualification is the most severe of the options open to the Assistant Commissioner.'

The Sanctions Guidelines outlines those circumstances in which disqualification may be an appropriate outcome. Paragraph 19(d) states 'Repeated failures to comply with the Code by Councillor McShane. For example, if there were repeated failures to comply after a period of suspension then it was highly likely that in a future adjudication decision, the Commissioner faced with a decision about that further failure to comply would opt to disqualify Councillor McShane'. This must be read in conjunction with the other factors identified at paragraph 19 including (h); 'If the conduct giving rise to a failure to comply with the Code is such as to render Councillor McShane entirely unfit for public office, then disqualification is likely to be the appropriate sanction'. Whilst the instant case is a second failure to adhere to the provisions of the Code of conduct it was confined to one date and the Commissioner should only disqualify if satisfied that Councillor McShane was as a consequence rendered 'entirely unfit for public office'.

An important consideration in determining whether disqualification was appropriate was the extent of the reputational damage to the Council (as distinct from the office of Councillor). The Investigation report and the Assistant Commissioner's decision on stages 1 and 2 of the Adjudication process make clear that the disrepute in this case does not extend to the Council.

The Deputy Commissioner contended that the Sanctions Guidelines and relevant decisions indicated that a period of suspension could be a suitable sanction in this case. In considering the length of suspension for the breach found, it is considered that a suspension of in or about 6 months would be consistent with the similar cases referenced.

The Assistant Commissioner then adjourned the Hearing until 3 March 2023 in order to provide Councillor McShane with an opportunity to make written submissions and for his legal representative to be in attendance at the reconvened hearing.

In advance of the hearing on 3 March 2023, Councillor McShane informed the Assistant Commissioner that the solicitor who attended on his behalf on 22 February 2023 was no longer acting for him. Councillor McShane also filed his submissions on Sanction dated 1 March 2023. Councillor McShane also noted the possibility of another solicitor acting for

him, but that this person was not available to attend the hearing on 3 March 2023. Councillor McShane therefore indicated that he wished to request an adjournment of the hearing.

3 March 2023

The Assistant Commissioner reconvened the Stage 3 Sanction hearing and Councillor McShane made his application for an adjournment. He stated that, although he was no longer represented by the solicitor who had appeared for him at the Hearing the previous week, 'other information' had come to light and he thought it was 'best to have legal representation'.

The application for an adjournment was opposed by Counsel for the Deputy Commissioner on the basis that the Adjudication was at a very advanced stage, that Councillor McShane had had the benefit of legal assistance throughout the process, that he had provided very detailed submissions on sanction, that there had been significant delay in the case, and that it was in the public interest that the matter should proceed.

In response to a query by the Legal Assessor, Mr Wilson, Councillor McShane acknowledged that the 'other information' to which he had referred, and which he claimed related to the investigation process, did not concern the Assistant Commissioner who, as the decision maker, had no function in the investigation process.

The Assistant Commissioner refused the application on the grounds that the matters raised in the application were not related to the adjudication process and that the Assistant Commissioner's role was to solely and independently consider the issue of sanction; that there were no issues in dispute relating to 'Facts' (Stage 1) or 'Breach' (stage 2), that she had received detailed submissions from the Deputy Commissioner and from Councillor McShane on sanction; that Councillor McShane had also had the benefit of substantial legal assistance at various stages of the process; and that it would not be a breach of his Article 6 (ECHR) rights to proceed with the Sanction's Hearing.

The Assistant Commissioner proceeded to consider Councillor McShane's submissions on sanction.

Private session

As a number of points raised in his submissions related to private matters, the Assistant Commissioner heard evidence of these matters from Councillor McShane during a private session of the hearing.

Public Session

The Assistant Commissioner summarised the key points arising from Councillor McShane's written submission on Sanction as follows:

1. Councillor McShane accepted the Assistant Commissioner's findings of Fact at Stage 1 and decision that he had breached the Code of Conduct at stage 2. He fully accepted that his behaviour on 12 July 2016 which led to the criminal convictions which were affirmed following his appeal was inappropriate; he submitted that he

had evidenced a clear demonstration of learning from the events on the 12 July 2016 over the last six and a half and years.

2. In previous cases the police have acknowledged that it is useful to have councillors present during parades should constituents need representation or assistance.
3. He noted that parades were an issue of difficulty and political disagreement and he asked the Assistant Commissioner to take this context into account, and that he had acted to build bridges between the parties involved in disputes about parades since the events in 2016.
4. The three criminal convictions should be distinguished from the cases which the Deputy Commissioner has brought to the Assistant Commissioner's attention – in his case there was no premeditation; he only became aware his actions were deemed to have been illegal on receipt of the police charges and therefore he had not intended to fail to comply with the Code.
5. The huge penalty reduction by the Judge on appeal reflected the extreme provocation and reflected the seriousness with which the Court viewed the convictions which were affirmed on appeal.
6. He referred to the Sanctions Guidance and that the principle purpose of the sanctions regime was the preservation of public confidence in local government representatives and the need to have confidence in good administration.
7. In that context he outlined his work during the intervening years since the events in 2016 which had led to the investigation of a number of governance and administration issues involving the Council; that his role was instrumental in ensuring the extraordinary audit by the Northern Ireland Audit Office took place; and that his motivation for this had been the greater public good and not for any personal gain.
8. He drew attention to matters relating to a High Court decision concerning his Council, and to Justice McCloskey's comments on his actions².
9. In relation to Sanction, he said any suspension from his role as a councillor would impact upon public confidence in the ethical standards regime and that he believed suspension would be a form of punishment or retribution, not for the events of July 2016 but for his work in raising concerns about the Council's governance.
10. In light of this he suggested a suspension for a period of 2 weeks, with an additional 3 months suspended for a year; that this would reflect the gravity of the offences, the time which has elapsed since the offences; that this would not set a precedent

² In the matter of an application by James Hugh Allister and Robert Edwin Agnew for judicial review –v Causeway Coast and Glens Borough Council [2019] NIQB 79.

but would reflect the efforts he have made on behalf of his constituents in the last 5 years.

Consideration of sanction:

The Assistant Commissioner considered very carefully the submissions made on behalf of the Deputy Commissioner and from Councillor McShane. She also paid careful regard to the Commissioner's Sanctions Guidelines, considered the seriousness of the breaches of the Code and the mitigating and aggravating circumstances of this case.

The Assistant Commissioner considered that the following Mitigating factors applied:

1. Councillor McShane had co-operated with the investigation and adjudication process, a point accepted by the Deputy Commissioner.
2. There was evidence of compliance with the Code since the events giving rise to the adjudication, which was also accepted by the Deputy Commissioner.
3. Councillor McShane had outlined that there was provocation on the day in question (which the Deputy Commissioner did not seek to contradict), that he was caught up in the events on the day, and that there was no premeditation on his part to commit the criminal offences and no intentional breach of the Code.
4. Councillor McShane had played an instrumental role in the reporting of 'misconduct identified in the extraordinary audit' of the Council by the Northern Ireland Audit Office and during a High Court Judicial Review of related matters. The Assistant Commissioner accepted that this had come at some personal cost to him; however, those issues post-dated the circumstances giving rise to the present complaint.
5. It was not appropriate for the Assistant Commissioner to draw conclusions on the specific allegations arising from Councillor McShane's governance concerns because that was the function of other public bodies, but she had considered the issues he has raised as a mitigating factor to the extent that Councillor McShane had committed himself to those processes and his conduct was endorsed during the High Court proceedings, including that he acted out of a sense of public duty, had unimpeachable motives and had acted in the public interest. The Assistant Commissioner acknowledged and give credit to him for this. She also took into account the impact those events had had on him personally.
6. Since the events took place there have been no further incidents; he had facilitated engagement between protesters and loyalist band members to build bridges and to help keep the peace.
7. The length of time since the events on 12 July 2016 which led to the criminal convictions was also a mitigating factor.-

The Assistant Commissioner considered that the following Aggravating factors applied:

1. The previous failure to comply with the Code – Councillor McShane was previously found to have breached the Code in November 2016 and a sanction of 3-month suspension imposed . This related to events which took place on 19 June 2015 - just over a year before the events on 12 July 2016 - but which did not give rise to any criminal proceedings. There had therefore been a repeat of a breach of the Code which was an aggravating factor, a point also made by the Deputy Commissioner.
2. Councillor McShane was convicted of 3 criminal offences - resisting police (fined £100), disorderly conduct in a public place (a conditional discharge) and taking part in an unnotified protest meeting (fined £100), and whilst the Assistant Commissioner recognised that the penalties were reduced significantly on appeal, it remained the case that Councillor McShane was convicted of criminal offences - and noting the media attention which referred to his role on the Council, this amounted to a breach of paragraph 4.2 of the Code in that Councillor McShane’s conduct had brought his office as a councillor into disrepute. This which was a serious breach of the Code of Conduct.

Decision on Sanction

The Assistant Commissioner carefully considered the overriding purpose of the ethical standards regime in Northern Ireland which was to preserve public confidence in those holding public office in local government and in the institution of local government, and to uphold and improve standards of conduct expected of councillors.

She considered the four options available to her in accordance with the Commissioner’s Sanctions Guidelines, namely, ‘no action’ ‘censure’ ‘suspension/partial suspension’ from office and ‘disqualification’ from office.

1. **No action** – as Councillor McShane was convicted of 3 criminal offences as a result of his own actions and this was not an inadvertent failure to comply with the Code, the Assistant Commissioner did not consider it appropriate for her to take ‘no action’ in relation to the breaches of the Code.
2. **Censure** – the breach of ‘disrepute’ which she had found arising from the criminal convictions were not a ‘minor failure’ as set out in the Commissioner’s Sanctions Guidelines, and she did not therefore consider a ‘censure’ was appropriate in this case.
3. **Disqualification** – this was the most severe sanction available to the Assistant Commissioner, and she had considered those previous cases involving criminal conduct where councillors have been disqualified from holding office. She also noted that the Sanctions Guidelines state that this was appropriate where there have been ‘repeated failures’ to comply with the Code:

For example, if there were repeated failures to comply after a period of suspension then it is highly likely that in a future adjudication decision, the Commissioner faced with a decision about that further failure to comply will opt to disqualify.

The Assistant Commissioner said that although Councillor McShane had previously been found to have breached the Code, and had received a 3 month suspension, she noted that whilst the events relating to his previous breaches of the Code had taken place in June 2015 he was not found to have breached the Code until November 2016 when that adjudication process ended, and this was some 4 months after the events on 12 July 2016 which led to the criminal convictions she was now considering. In view of this, the Assistant Commissioner did not consider the circumstances in this case met the criteria for disqualification.

Furthermore, whilst her decision that Councillor McShane had brought his office as councillor into disrepute was a serious breach of the Code, in view of the local government elections which are due to take place in May 2023, the Assistant Commissioner considered that any period of disqualification would be a disproportionate sanction in all the circumstances.

She therefore considered whether a period of suspension or partial suspension was appropriate.

4. **Partial suspension** appeared to be designed to meet circumstances where poor conduct related to a particular activity or section of council business, and as Councillor McShane's criminal conduct occurred did not occur whilst Councillor McShane was acting in an official capacity as a councillor, she did not consider partial suspension to be appropriate.
5. **Suspension** – The Sanctions Guidelines state that a period of suspension was appropriate where the conduct was not sufficiently serious to warrant disqualification, but it was such that a period of suspension was necessary to uphold public confidence in the standards regime and local democracy, that it should reflect the severity of the matter, and to make it understood that such conduct should not be repeated. The criminal convictions and the finding that Councillor McShane had brought his office into disrepute met this criteria for suspension.

The Assistant Commissioner confirmed that she had no power to impose a 'suspended' suspension as Councillor McShane has suggested.

The Assistant Commissioner noted that the Deputy Commissioner had referred to previous adjudication cases in his submission, and that she should consider 'the level of sanction imposed by the criminal court as providing some context of the seriousness with which the offence should be viewed.'

The previous cases she had been referred to all involved sentences imposed by the Court which were harsher than the two fines of £100 and the conditional discharge the Court imposed on Councillor McShane when his convictions were affirmed on

appeal. The Assistant Commissioner took this into account when comparing this case with the previous cases which had been brought to her attention.

She considered that this case was unique when compared with the other councillor cases involving criminal conduct. The previous adjudication decisions had involved, sexual assault, fraud, and drink driving offences. In her view the present case was of a different nature because:

1. The age of this case since the events in 2016, during which time matters have been hanging over Councillor McShane
2. The criminal conduct in this case was of a public nature.
3. The evidence the Assistant Commissioner had received from Councillor McShane of what he had since done in relation to the Parades' situation in Ballycastle, and more generally the operation and governance of his Council.

The Assistant Commissioner stated that she also wished to emphasise that the purpose of the ethical standards regime was not to punish Councillor McShane, rather it was to uphold standards in local government. It was important to make it clear that her decision on sanction did not in any way reflect upon subsequent issues that had arisen within his Council.

Her decision, as such, did not revisit the criminal convictions but rather considered the consequential finding of disrepute in breach of the Code, whilst also giving Councillor McShane significant credit for his conduct since the events of July 2016 and reflected the unique factors of this case. The Assistant Commissioner considered that a period of suspension of 2 months was necessary to promote public confidence in local government and to reflected the nature and severity of the breach of the Code in this case.

She noted and endorsed the Deputy Commissioner's comments in the case of *Heesom v Public Services Ombudsman for Wales [2014] EWGC 1504 (Admin)* in which Mr Justice Hickinbottom had referred to the need for consistency in sanction and which she had taken into account. This was a case which, but for the unique factors she outlined, would have merited a more significant suspension and more closely aligned to the previous adjudication cases. The 2 month suspension was, in the Assistant Commissioner's view, the minimum sanction necessary to uphold confidence in local democracy and reflected the seriousness of the finding of 'disrepute' whilst also proportionately and appropriately reflecting the unique mitigating factors of this case which she had outlined.

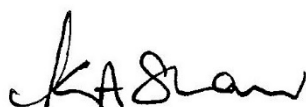
She had considered what Councillor McShane had said about upcoming events in the Council, relating to what might have broadly been described as governance issues, but it seemed to the Assistant Commissioner that the work that others were undertaking in relation to those governance issues was not contingent on whether or not Councillor McShane was in office as a councillor.

However, the Assistant Commissioner recognised that it may have been appropriate to afford Councillor McShane a short period to prepare for the suspension and to put arrangements in place, and she had therefore decided to delay the commencement of his period of suspension until 8 April 2023 – the suspension would therefore take effect on 8 April 2023 and whilst ordinarily it would run for 2 months, it would be affected by the local government elections scheduled to take place on 18 May 2023.

In accordance with the terms of the Local Government (Northern Ireland) Act 2014, Councillor McShane's period of suspension would therefore run from 8 April 2023 for remainder of his term of office.

Leave to Appeal

Pursuant to section 59 (14) of the Local Government Act (Northern Ireland) 2014 Councillor McShane 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 this Decision.

A handwritten signature in black ink, appearing to read 'K. Shaw'.

Katrin Shaw

**Assistant Commissioner NI Local Government Commissioner for Standards
8 March 2023**