



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

In the matter of Councillor Clement Cuthbertson

(Mid Ulster District Council)

Case Reference: 202003875

Decision of the Adjudication Commissioner – Ian A. Gordon

Legal Assessor - Michael Wilson, Solicitor

By virtue of section 55(1)(a) of the Local Government Act (Northern Ireland) 2014 ('the 2014 Act'), the Northern Ireland Local Government Commissioner for Standards ('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').

Background

1. On 7 December 2022 the Commissioner received a written allegation from Councillor Malachy Quinn that Councillor Clement Cuthbertson (the Councillor), a member of Mid Ulster District Council (the Council) had, or may have, failed to comply with the Code.
2. The 2014 Act gives the Commissioner the authority to investigate and, where appropriate, to adjudicate on written allegations that a councillor has, or may have, failed to comply with the Code.
3. The Commissioner has delegated the authority to investigate allegations to the Deputy Commissioner and, subsequent to his investigation in this matter, he prepared an Investigation Report dated 4 October 2024. The Investigation Report included the Deputy Commissioner's findings of fact giving rise to the referral, and set out his reasoning why those facts, together with the supporting evidence, might be regarded as a failure to comply with the Code.

4. I have had no role in the receipt, assessment or investigation of an allegation of a breach of the Code, and I was not involved in the decision by the Deputy Commissioner to refer this matter for consideration for Adjudication.
5. On 13 November 2024 I informed the Councillor that I had been appointed by the Commissioner to deal with this matter, and I also informed him that I had considered the Investigation Report and had decided to hold an Adjudication in accordance with the Commissioner's Procedures for Adjudication.
6. A number of Adjudication Reviews (which facilitate the efficient management of the Adjudication process) have been held in the presence of the parties. The Adjudication is an inquisitorial process comprising up to three Stages; Stage 1 – the Finding of Facts; Stage 2 – the Determination of Breach; and, if required, Stage 3 – Sanction. With the agreement of the parties, I determined Stages 1 and 2 on the papers.

The Allegations of Breach of the Code

In his Investigation Report the Deputy Commissioner concluded that the Councillor may have failed to comply with the following paragraphs of the Code:

Paragraph 4.2: *'You must not conduct yourself in a manner which could reasonably be regarded as bringing your position as councillor, or your council, into disrepute'. This rule applies to councillors at all times, even when they are not acting in the role of councillor.*

Paragraph 4.13: *'[You must] (a) show respect and consideration for others.'*

and that the Councillor may have failed to comply with the following Principles of Conduct on which the Code is based:

Promoting Good Relations *'You should act in a way that is conducive to promoting good relations by providing a positive example for the wider community to follow and that seeks to promote a culture of respect, equity and trust and embrace diversity in all its forms'.*

Respect *'It is acknowledged that the exchange of ideas and opinions and policies may be robust, but this should be kept in context and not extended to individuals being subjected to unreasonable and excessive personal attack. You should keep in mind that rude and offensive behaviour may lower the public's regard for, and confidence in councillors and councils. You should therefore show respect and consideration for others at all times.'*

Good Working Relationships (between councillors) *'You should work responsibly with other councillors for the benefit of the whole community. You must treat other councillors with*

courtesy and respect. You must abide by your council's standing orders and should promote an effective working environment within your council.'

Stage 1 – Finding of Facts

The following Findings of Fact were those that I considered were most relevant to the alleged breaches of the Code.

1. The Councillor was initially co-opted as a councillor onto Dungannon & South Tyrone Borough Council in December 2013;
2. In May 2015 as part of local government reorganisation Dungannon & South Tyrone Borough Council merged with other District Councils to become Mid Ulster District Council (the Council);
3. At all relevant times since December 2013, the Councillor has been a co-opted or elected member of the Council (including its predecessor);
4. Subsequent to his election in the 2019 local government election, and as required by section 7 of the Local Government Act (NI) 1972, the Councillor signed a Declaration dated 10 May 2019 affirming that he had read and would observe the Code in the performance of his functions as a councillor;
5. A similar Declaration was signed by the Councillor on 1 June 2023 following his election in the 2023 local government election;
6. The Councillor held the position of Deputy Chair of Council from June 2019 until May 2020;
7. The Councillor has held the position of Chair of the Council's Environment Committee since June 2023;
8. In or about August 2022, Coalisland Fianna Gaelic Football Club (Fianna Oileán an Ghuail CLG) organised a children's tournament referred to as the '*Under 7.5's Francie Hughes Memorial Tournament*'.
9. This tournament was to commemorate Francis (Francie) Hughes, a past chair of the club, who died in 1990, leaving a wife and five children under seven years of age.
10. On 9 August 2022, the Councillor made a Facebook post 2022 stating:

“Disappointing, but unfortunately no longer surprising, that the gaa (sic)¹ continues to idolise convicted terrorists. This would be unacceptable in any other part of the World. I would ask Parents to think twice before allowing your children to support such events. Also disappointing to see a local business sponsoring it.

We can only assume by their silence, the Ulster Gaa & all elected representatives in the Mid Ulster area are in support of this blatant glorification of terrorism?? #therewasanalternative”;

11. The Councillor’s Facebook post contained two screenshots; one being the Coalisland Club’s poster for the tournament, and the other detailing participating teams. The screenshots also detailed the participating teams’ logos, including that of ‘Dungannon Thomas Clarkes’.
12. The Councillor stated that the advertisement was brought to his attention by a number of ‘concerned constituents’.
13. The tournament had no connection with another local man of the same name who had died in 2021 and who was referenced in the allegation made by Councillor Malachy Quinn, nor with a Francis Hughes who was member of the IRA who died on hunger strike in 1981.
14. Following contact from a journalist, the Councillor removed the Facebook post approximately 25 minutes after posting it.
15. On 9 August 2022, a member of the deceased’s family contacted the Councillor by e-mail as follows:

‘Good Day Cllr Cuthbertson

I’m sure you are well aware by now at the mistake you made into thinking my uncle was a terrorist.

He was in fact quite the opposite.

He done so much for the Coalisland and Clonoe communities that he deserved to be recognized for future generations for the work he done to get his beloved GAA club to where it is today.

He’s been gone for 32 years. On the day he died he had five children under 7 years old and a pregnant wife. So you can only imagine how life was after that.

That same wife is now in the last moments of her life after recently being diagnosed with stage 4 lung cancer. She never drank or smoked a day in her life. The last thing

¹ The GAA is a reference to the Gaelic Athletic Association.

this family needed was someone to come out and claim their husband and father was a terrorist. I hope before you make public posts again you do some research. You should be trying to bring communities together, not point out nonsense to keep people hating each other.

Please do better.'

16. The Councillor responded on 10 August 2022 stating *'Thanks for your email. Send me your number and I will give you a call, Many thanks Clement.'*
17. The Councillor had no further contact with this person, or the family.
18. The Councillor attended the Council meeting on 22 September 2022 where other Councillors raised the matter of the Facebook post.
19. The Minutes of the meeting record that the Councillor was offered the opportunity to speak, and that he stated (among other things) *"he would not be apologising to the GAA who continue to idolise terrorists, should it be recent or 100 years ago"*.
20. The Minutes further record that the Chair reminded the Councillor *"that he had been asked to respond to the comments made about the hurt caused to the Hughes family"*, and that the Chair stated that *"it was evident that [he] did not wish to respond on the matter being discussed and moved on"*.
21. In an e-mail to the Deputy Commissioner's Investigating Officer dated 4 February 2023, the Councillor stated (with reference to the allegation made by Councillor Quinn) that:

"Cllr Quinn refers to the young club member who died "a few years previously" and the family "who are still grieving". While I acknowledge that a family would most definitely still grieve no matter how many years has past, it is clear Cllr Quinn himself believes that the tournament is named after the Francie Hughes who died in 2021, a mistake made by a number of actual club members in abusive comments made and directed to myself last August. This highlights the confusing message sent out by the Club in August of last year, in the same month that the "IRA volunteers" were being commemorated, when they posted regarding a "Francie Hughes Memorial Cup".
22. In this e-mail the Councillor also stated *"The family did not seek an apology from myself"*.

23. In a further e-mail to the Deputy Commissioner's Investigating Officer dated 3 August 2023 the Councillor stated that his Facebook comments were *"to equally highlight the use of a convicted terrorists (sic) image (Thomas Clarke) on the advertisement."*
24. The Councillor attended for interview on 11 December 2023 with the Deputy Commissioner's investigation team. In the course of the interview, he referred to the reference in his Facebook post to Thomas Clarke and stated that he *"was a convicted bomber [and] a terrorist"* and that *"it's a continual glorification of terrorism, is why I made the post."*² He also stated that *"...because at that particular time there was an anniversary for a hunger striker called Francie Hughes and ...it seemed to be a clear link."*
25. The matter was reported in the media, including in the Irish News on 11 August 2022 which referenced the Councillor as being *"silent over GAA family apology"*.

STAGE 2 – DETERMINATION ON BREACH

The evidential test for breach is whether, on a consideration of all of the evidence, including the Finding of Facts together with the full content of the Investigation Report, the Councillor Response Form dated 18 December 2024 and the Councillor's e-mail dated 30 January 2025, it has been established on the 'balance of probabilities' that there had been a failure to comply with the Code.

Submissions on Breach

Submissions were received from the Deputy Commissioner and the Councillor and have been fully considered. They shared much in common, in particular, in the identification of the factual background; the applicability of Article 10 of the European Convention on Human Rights (ECHR) and its judicial consideration. Within the submissions on Article 10 ECHR, the parties diverged on whether or not the enhanced protection afforded to the Councillor (as a politician) applied in this case.

Application of the Code

I also took into account the following general provisions of the Code (and the Guidance referred to) in my determination of the alleged breaches:

1. The Code came into force on 28 May 2014 and applies to all Councillors. Parts 1 to 8, which include Principles of Conduct, Rules of General Conduct, Rules relating to the

² The Investigation Report notes that Thomas Clarke was an Irish Republican and a leader of the Irish Republican Brotherhood, and that he was arguably the person most responsible for the 1916 Easter Rising.

Registration, Disclosure and Declaration of Interests, and Rules of General Conduct, came into. The application of the Code with regard to Planning Matters came into effect on 1 April 2015.

2. The Code is supplemented by detailed Guidance for Councillors published by the Commissioner in May 2017³ (1.6).
3. The Code states that the public has the right to expect high standards of behaviour from Councillors who are obliged to ensure that their conduct complies with the Code (1.5).
4. The Code details the principles and rules of conduct that Councillors are required to observe when acting as a Councillor and in conducting council business, and states that a Councillor's behaviour will be judged against these standards of conduct (1.5).
5. Every Councillor must complete a declaration of acceptance of office before they can act as a councillor, and this declaration includes an undertaking that the Councillor has read and will observe the Code (2.3).
6. The Code makes it clear that it is a Councillor's responsibility to ensure that they are familiar with the Code and that they comply with it (2.6).
7. Part 3 of the Code outlines 12 principles of conduct which underpin the rules of conduct (3.1). These include the principles of Promoting Good Relations, Respect and Good Working Relationships (between councillors).

Reasons for Determination

The Code applied to the Councillor - he had signed a Declaration of Acceptance of Office on 10 May 2019, affirming that he had read and would observe the Code.

Paragraph 4.2 (disrepute)

The relevant Guidance on the Code is instructive:

Paragraph 2.7 states:

³ <https://www.nipso.org.uk/nlgcs/about-us/about-code-conduct>

'It is important that you note that when the Code applies to you, it applies not only in relation to what you do, but also to all your communications, both verbal and written. This includes, for example, what you say in the council chamber or in conversation, comments you make in letters or emails and in your use of social media such as Twitter, Facebook or internet forum or blogs.'; and

Paragraph 4.5.4 states (with specific regard to paragraph 4.2 of the Code):

"When considering whether a councillor's actions or behaviour could reasonably be regarded as bringing their position, or their 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 a councillor, or your council into disrepute."*

In August 2022 the Coalisland Fianna Gaelic Football Club (Fianna Oileán an Ghuail CLG) organised a children's tournament referred to as the 'Under 7.5's Francie Hughes Memorial Tournament'.

On the 9 August 2022, the Councillor made a Facebook post on the tournament:

"Disappointing, but unfortunately no longer surprising, that the gaa continues to idolise convicted terrorists. This would be unacceptable in any other part of the World. I would ask Parents to think twice before allowing your children to support such events. Also disappointing to see a local business sponsoring it. We can only assume by their silence, the Ulster Gaa & all elected representatives in the Mid Ulster area are in support of this blatant glorification of terrorism?? #therewasanalternative".

The post contained two screenshots of posts by a Facebook account "Fianna Oileán an Ghuail CLG" sharing the Coalisland Fianna G.F.C poster for the "U7.5s Francie Hughes Memorial Tournament" and also listed participating teams and sponsors.

The Finding of Facts (Stage 1) set out Facts relevant to this Post:

- (13) The tournament had no connection with another local man of the same name who had died in 2021 nor with a Francis Hughes who was member of the IRA who died on hunger strike in 1981.
- (14) Following contact from a journalist, the Councillor removed the Facebook post approximately 25 minutes after posting it.

- (15) On 9 August 2022, a member of the deceased's family contacted the Councillor by e-mail, as follows:

'Good Day Cllr Cuthbertson

I'm sure you are well aware by now at the mistake you made into thinking my uncle was a terrorist.

He was in fact quite the opposite.

He done so much for the Coalisland and Clonoe communities that he deserved to be recognized for future generations for the work he done to get his beloved GAA club to where it is today.

He's been gone for 32 years. On the day he died he had five children under 7 years old and a pregnant wife. So you can only imagine how life was after that.

That same wife is now in the last moments of her life after recently being diagnosed with stage 4 lung cancer. She never drank or smoked a day in her life. The last thing this family needed was someone to come out and claim their husband and father was a terrorist. I hope before you make public posts again you do some research.

You should be trying to bring communities together, not point out nonsense to keep people hating each other.

Please do better.'

- (16) The Councillor responded on 10 August 2022 stating 'Thanks for your email. Send me your number and I will give you a call, Many thanks Clement.'
- (17) The Councillor had no further contact with this person, or the family.

The inaccurate content of the post received the attention of the media. A number of media outlets reported on the Councillor's Facebook post, both at the time of the post and following the Council meeting in September 2022.

The Irish News reported on 10 August 2022:

"Asked if he would be willing to apologise, Mr Cuthbertson told the Irish News: "I'll check to see to see, I'll check it and if it's wrong I'll take it down". Pressed on whether he would apologise he said, "we'll need to see what happens first".

During interview by the Deputy Commissioner's investigating team, the Councillor stated several times that he never mentioned Francie Hughes in his Facebook post. He subsequently stated that he made the post because there '*seemed to be a clear link*' between the name of the tournament and the anniversary of a '*hunger striker called Francis Hughes*'. The Councillor also stated that he took down the post after a journalist contacted him and told him that the poster may not have any connection to Francis Hughes the hunger striker.

In his submissions, the Councillor stated:

'It is submitted by the Councillor that, the purpose for creation of the index post was to highlight the ongoing and "continual glorification of terrorism" by the Gaelic Athletic Association (GAA), as outlined at interview with LGES.'

The Councillor was asked several times during interview, 'would he have made his Facebook post had he known who the tournament was actually named after?' The Councillor did not answer this question.

I noted the conclusion of the Deputy Commissioner in his report:

"I consider it is clear that Councillor Cuthbertson mistakenly believed the tournament was commemorating Francis Hughes the hunger striker, and his post reflected this misunderstanding. However, he appears to have taken no steps to clarify or check this belief. It is evident there was no factual basis for his comments".

The Councillor also submitted:

"T[]hat the swift removal of the impugned post and awareness as to the rationale behind its removal by all parties, evidenced the Councillor's regard to assert only factual evidence as proof of the ongoing glorification of terrorism by the GAA; a fact in and of itself. An ongoing willingness to publicly apologise for the erroneous element of the impugned post, demonstrates commitment to promote respect and good relations".

Article 10 ECHR

Article 10 provides particular safeguards in respect of the right to engage in political debate and discussion on matters of public interest. The enhanced nature of the protection afforded to politicians and/or political speech was considered in the instructive case Heesom v Public Services Ombudsman for Wales [2014] 4 All ER 269, which has been referenced by both parties.

I have considered the fact that councillors operate in a political environment, being free to make political points and discuss matters of public concern without undue interference. However, the right to freedom of expression is not absolute and restrictions can be imposed to protect the rights and reputations of others.

I carefully considered the submissions by the Deputy Commissioner on Article 10, in particular (at paragraph 12 (ii)):

“...if what the Councillor said was construed as political speech, then in order to avail of the protection of Article 10 he would need to have made the pronouncement in good faith and there would need to be some reasonable (even if incorrect) factual basis for saying it. In the instant case the Councillor appears to have recklessly (and absent any reasonable diligence) asserted a purported fact in relation to the identity of the individual after whom the tournament in question was named. Even allowing some latitude for elements of the post which constitute a critique of the GAA, it is submitted that the personal attribution against the deceased Mr Hughes does not pass the reasonableness threshold to merit protection in this instance. This is because even a cursory investigation into the identity of the person after whom the tournament was named would have revealed he was not a convicted terrorist. No such investigation appears to have taken place prior to the post being made”.

In response, the Councillor’s submitted (at paragraph (ii)):

At the time of publication of the impugned post, the Councillor was acting in good faith in challenging, within a political context, the ongoing glorification of terrorism by the GAA and those associated with it, who, “by their silence” were evidently “in support of such blatant glorification.” This action, in good faith, was grounded upon the belief by the Councillor at that time, that the event post screenshots contained references to two convicted terrorists; the chief of which being Francie Hughes, a convicted terrorist and hunger striker alongside Thomas Clarke, a leader in the Irish Republican Brotherhood and noted within the Investigation Report as ‘arguably the person most responsible for the 1916 Easter Rising.’

I was satisfied that the Councillor had implied the ‘Under 7.5s Francie Hughes memorial tournament’ was being held in memory of a convicted terrorist; evidenced by the Councillor’s wording in his post:

- *‘the gaa continues to idolise convicted terrorists’ and*
- *‘in support of this blatant glorification of terrorism’*

The Article 10 freedom of expression is not unlimited and carries with it duties and responsibilities. The enhanced protection afforded to politicians is susceptible to a number of principles that are relevant in this case, including:

- a greater degree of immoderate or offensive language or comment is tolerated;
- statements that are incorrect, but honestly made, are protected;
- ‘political expression’ is a broad concept;

- a distinction is made between fact, and comment on matters of public interest involving value judgment. As the latter is unsusceptible of proof, comments in the political context amounting to value judgments are tolerated even if untrue, so long as they have some—any—factual basis;
- what amounts to a value judgment as opposed to fact will be generously construed in favour of the former; and, even where something expressed is not a value judgment but a statement of fact, will be tolerated if what is expressed is said in good faith and there is some reasonable (even if incorrect) factual basis for saying it.

Both parties have drawn attention in their submissions to the position (as clarified in Heesom) that to avail of Article 10 protection the Councillor would need to have made the pronouncement in good faith and that there would need to be some reasonable (even if incorrect) factual basis for saying it.

The Deputy Commissioner commented:

‘The clear implication of the index post is that ‘the event’, namely the Under 7.5s Francie Hughes memorial tournament, amounts to idolatry of a convicted terrorist and would be a ‘blatant glorification of terrorism’. It is clear for reasons set out infra that the Councillor is saying that the tournament is being held in memory of a convicted terrorist. The (erroneous) status of Francie Hughes is asserted as a fact.

In the instant case the Councillor appears to have recklessly (and absent any reasonable diligence) asserted a purported fact in relation to the identity of the individual after whom the tournament in question was named. Even allowing some latitude for elements of the post which constitute a critique of the GAA, it is submitted that the personal attribution against the deceased Mr Hughes does not pass the reasonableness threshold to merit protection in this instance. This is because even a cursory investigation into the identity of the person after whom the tournament was named would have revealed he was not a convicted terrorist. No such investigation appears to have taken place prior to the post being made.

Even if the post was considered to contain some element of ‘value judgment’ as per paragraph 59 of Lombardo v Malta (2009) 48 EHRR 558, the jurisprudence stipulates that ‘even where a statement amounts to a value judgment, the proportionality of an interference [with the maker’s Article 10 rights] may depend on whether there exists a sufficient factual basis for that statement’. Given that in the instant case, it is submitted that no sufficient factual basis for the statement arose, interference with an Article 10 right, even an enhanced one (should it be found to arise), would be justified and proportionate.’

On the Councillor's behalf, it was submitted:

'Prior to publication, the Councillor's attention had been drawn to the issue by a number of constituents who had contacted in relation to it' and outlined their desire to have the continuing glorification of terrorism by the GAA highlighted in respect of the advertising for the Under 7.5s Francie Hughes Memorial Tournament. The clear implication to be drawn here, by an objective observer, would be that such individuals were also acting within the belief that the primary individual referenced, Mr Francie Hughes was that of Francie Hughes – convicted IRA terrorist and hunger striker. In light of this, the Councillor sought to represent the view and opinion of those for whom he was elected to represent; by raising the issue publicly.

Subsequent to publication, the Councillor was made aware by a journalist that the Francie Hughes identified within the screenshot posts may not be that of the convicted terrorist. Upon receipt of this information, the Councillor acted immediately to remove the post from social media. It is therefore asserted that such action provides an evidential basis for the Councillor's submission that the creation and publication of the index post were entirely in good faith.'

In coming to my decision, I emphasise this adjudication is not about the GAA, rather it is about the Councillor and his actions in relation to an event concerning the deceased, Francie Hughes, who was not a terrorist.

I was satisfied that the Councillor failed to make any reasonable investigation into the actual identity of the person after whom the Tournament was named.

In such an emotive Post on terrorism, in reference to a children's football tournament, I considered the Councillor should and could have made some enquiry to validate that the information provided to him by constituents was accurate. The fact that *'a number of constituents had contacted him in relation to it'* did not absolve the Councillor from making some enquiry before rushing to publish his post, and he was not entitled to rely on whatever motivated those constituents to contact him.

Furthermore, and whilst this is not, of itself, determinative of the issue, the speedy removal of the post is also supportive of the conclusion that the Councillor had no reasonable basis for accepting the factual accuracy of what he was told, and that no reasonable diligence had been brought to bear before the post was made.

I also noted that the Councillor's Post went beyond comments on the GAA, or the GAA club who organised the event; he also commented about parents, councillors, and a local business.

I consider that any interference with the Councillor's freedom of expression arising from this Facebook Post is justified with reference to Article 10(2) ECHR, as it is prescribed by law and adherence to the Code is necessary in a democratic society to maintain standards, protect the rights and reputation of others and ensure that the council (or the office of a councillor) is not brought into disrepute.

I agree with the Deputy Commissioner's conclusion:

"Given the egregious nature of the comments and the fact they were directed at individuals including the clear hurt to the family of Francie Hughes I consider it is necessary to interfere with Councillor Cuthbertson's article 10 rights."

Having considered all the facts of this incident, I was satisfied the Councillor's conduct was likely to diminish the trust and confidence the public placed in his position as a Councillor. I determined that a member of the public, knowing all of the relevant facts, would reasonably consider that the Councillor's conduct was such that it brought his position as a Councillor into disrepute.

Whilst I found that the Councillor had breached paragraph 4.2 of the Code, I did not find evidence that the Councillor's conduct had brought his council into disrepute. In coming to this conclusion I noted and accepted the submission of the Deputy Commissioner who had referenced the case of Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin), which concerned offensive comments made by the then Mayor of London, Ken Livingstone. In that case the court drew a distinction between an elected representative bringing themselves into disrepute and bringing his or her office into disrepute:

"While the appellant has a high profile as Mayor, I doubt that many people would regard what he did as bringing disrepute on the office rather on him personally. Misuse of the office can obviously bring disrepute on the office, but personal misconduct will be unlikely to do so."

The Councillor's Post was inaccurate, unacceptable and offensive but I found insufficient evidence that it brought the Council into disrepute.

Paragraph 4.13 (respect and consideration)

The Councillor published a Facebook Post which contained inaccurate, unacceptable and offensive comments about a deceased man (Francie Hughes). The post also referenced all elected representatives in the Mid Ulster area, and referred to a local business. When contacted by the media, and informed he was mistaken about the identity of the deceased man, he took down the post.

The post attracted media attention. The Councillor obfuscated about his action rather than enlightening the public of any regret for his offensive post.

A member of the Hughes family emailed the Councillor criticising the Post. The Councillor replied asking for a contact telephone number but did nothing further to ameliorate the distress he had caused the family.

The Councillor submitted:

“The Councillor, when contacted by an individual claiming to represent the Hughes family, sought initially to establish the bona fide identity of the individual before engaging in discussion on the matter. This in no way points to an unwillingness, at that stage or subsequent, on the part of the Councillor, to apologise for the error made and any hurt or distress caused to the family involved and should not be viewed as such. The Councillor has always been willing to apologise to the family involved. It is submitted, that this was the primary motivation for seeking a telephone number; motivation consistent with para 4.13(a)”.

I acknowledge that the family had not asked for an apology and that the complaint, which was made to the Commissioner, did not emanate from those directly referenced in the post. I questioned whether this could be viewed as reasonable justification for the Councillor’s failure to correct the public record, particularly in the circumstances where the post had been reported upon within the local and national media. The Councillor’s response was:

“Asked if he would be willing to apologise, Mr Cuthbertson told the Irish News: “I’ll check to see to see, I’ll check it and if it’s wrong I’ll take it down”. Pressed on whether he would apologise he said, “we’ll need to see what happens first”.

The Deputy Commissioner in his submission stated:

‘The explanation offered by the Councillor that the family did not specifically request an apology and that the complaint made to the Commissioner did not emanate from those directly referenced in the post, does not provide reasonable justification for the Councillor’s failure to correct the public record. It is submitted this is particularly so in circumstances where the post had been reported upon within the local and national arena’.

At a meeting of the Council on 22 of September 2022, the matter of the Facebook post was raised by other councillors, and the Councillor was offered the opportunity to speak. He said, among other things:

“he would not be apologising to the GAA who continue to idolise terrorists, should it be recent or 100 years ago”.

The Chair of the meeting reminded the Councillor that he had been asked:

“to respond to the comments made about the hurt caused to the Hughes family”.

During his interview with the Investigation team, the Councillor said he did not apologise at the meeting because:

“it wasn’t on the agenda...I didn’t get any pre warning of it”.

However, the recording of the Council meeting confirms that the Councillor spoke for two minutes 30 seconds on the matter, but took no steps to clarify the situation regarding his post nor to apologise to those impacted. The Chair of the meeting stated:

“It was evident that (the Councillor) did not wish to respond on the matter being discussed and moved on”.

I conclude that the Councillor failed to take any meaningful or sufficient action to express his regret or apology for the offensive post, either to the family or to his fellow Councillors.

Taking into account all of the circumstances of this matter and notwithstanding the prompt removal of the Facebook post, I am satisfied that the Councillor failed to show respect and consideration for others, in breach of his obligation under paragraph 4.13(a) of the Code .

STAGE 3 SANCTION

The Sanction Hearing was held in public on Wednesday 9 April 2025, when the Councillor was present and represented by Mr Matthew Magill BL. The Deputy Commissioner was represented by Mr Christopher Sherrard BL. As this was a public hearing I first outlined a summary of the Finding of Facts and the Breaches of the Code, before turning to consider Sanction.

SUBMISSIONS ON SANCTION

I sent a copy of my decision on the Councillor’s Breaches of the Code to the Deputy Commissioner and the Councillor on 21 March 2025, with a Direction to make submissions on Sanction. I received written submissions from both through their appointed Counsel. I also invited them to make oral representations, which they both did. Save for the following point, which addresses an apology proposed by the Councillor in an e-mail dated 14 March 2025, these oral submissions did not add to their written submissions.

In relation to the proposed apology, Mr Magill BL (for the Councillor) said:

“Councillor Cuthbertson has always been willing to apologise to the family and we leave that as evidenced. Although late in the day we acknowledge that perhaps he hasn't articulated his position very well throughout this process. The Stage 2 apology has been submitted in an effort to show his position, granted though it is late in the process”.

It is not the Adjudication Commissioner's function to parse the content of the proposed apology. The option to apologise to the family, and in public, had always been available to the Councillor. Although the Councillor was unrepresented during Stages 1 and 2 of the Adjudication, and it may be that the proposed apology arose as a result of the Councillor obtaining legal advice at an advanced stage of the Adjudication, it is important to record that at each of the three Adjudication Reviews, the Councillor was reminded by both me and by my Legal Assessor, Mr Wilson of his entitlement to seek legal advice regarding the Adjudication.

I took into account the following mitigating and aggravating factors:

Mitigating factors

- There was no previous history of non-compliance with the Code
- The Councillor is a long serving member of the Council, initially co-opted as a councillor onto Dungannon & South Tyrone Borough Council in December 2013
- The Councillor co-operated with the Deputy Commissioner's investigation and the adjudication process.
- There has been no evidence of non-compliance with the Code since the events giving rise to the adjudication.
- The Councillor's proposed apology, albeit belated.

Aggravating factors

- The Councillor is an experienced councillor.
- The fact that the Councillor had failed to make any reasonable investigation into the actual identity of the person, after whom the Football Tournament was named, before making his post.
- The failure to make a meaningful correction to the post, after its removal, or to apologise, showed a lack of consideration for the family and disregard of his public role as a Councillor.
- The post attracted media attention. The Councillor obfuscated about his action, including at Council, rather than enlightening the public of any regret for his offensive post. This displayed an unwillingness to recognise the impact of his post on public opinion.
- He brought his position as a Councillor into disrepute.

- The Councillor, by seeking to unfairly blame others, demonstrated a lack of insight.
- The lack of insight into his actions suggested a breach of the Code may possibly reoccur.

DECISION ON SANCTION

I have considered the Sanction Guidelines, and note that that the principal purpose of a Sanction is the preservation of public confidence in local government representatives, and that a decision on Sanction should also support the following objectives:

- the public interest in good administration.
- upholding and improving the standard of conduct expected of councillors.
- the fostering of public confidence in the ethical standards regime introduced by the 2014 Act.

The purpose of Sanction is not to punish the Councillor. Any Sanction must be justified in the wider public interest, and it will be designed to discourage or prevent the Councillor from any future failures to comply with the Code and to discourage similar conduct by other councillors.

I considered the available Sanctions:

1. No action – this was not an appropriate Sanction given the nature of the Councillor's breaches.
2. Censure – likewise this was not an appropriate Sanction in view of my findings.
3. Partial suspension – was more likely to be appropriate where the conduct related to a particular activity or Council business from which the Councillor could be easily removed. This was not a relevant Sanction in this case.
4. Disqualification - this was the most severe option open to me, but I did not consider it to be an appropriate or necessary Sanction, in view of my findings.
5. Suspension - The Sanctions Guidelines state that suspension is to be considered where the conduct is not sufficiently serious to warrant disqualification, but the conduct is of a nature that:
 - it is necessary to uphold public confidence in the standards regime and/or local democracy.
 - there is a need to reflect the severity of the matter; and
 - there is a need to make it understood that the conduct should not be repeated.

I carefully considered the information put forward by Mr Magill BL in relation to the Councillor's personal and financial circumstances, and the possible impact on him, if any, if the payments he received as a councillor were to be suspended as a result of the Sanction

imposed. However, I did not consider that the Sanction that I intended to impose would have a material effect on the Councillor and or his family.

The parties in their helpful Submissions on Sanction have referenced a number of previous Adjudication Decisions in which a Sanction of suspension of varying duration was imposed. I have considered these cases, which are helpful, but ultimately each case will be decided on its own particular facts.

Whilst I consider the facts of this case would normally merit a sanction of four months, I have given full credit for the mitigating factors outlined, and in the expectation that there should be no future breach of the Code by the Councillor.

My decision is to suspend the Councillor for a period of (approximately) three months which will begin on the date of this written Decision and which will end on 11 July 2025. I consider that this is the least severe Sanction necessary in the circumstances of this matter to uphold public confidence in the standards regime and local democracy, to reflect the severity of the matter, and to make it understood that the conduct should not be repeated.

Finally, it is important to emphasise that this Adjudication was not about the GAA; rather it was about the Councillor and his actions in relation to an event concerning the deceased, Francie Hughes who was an entirely law abiding person. The particular football tournament was set up to commemorate someone who was not a terrorist; in addition, it was a tournament for very young children, up to seven and a half years, and the Councillor's post could have adversely affected those children.

LEAVE TO APPEAL

Pursuant to section 59 (14) of the Local Government Act (Northern Ireland) 2014, the Councillor may seek the permission of the High Court to appeal against a decision made by the Adjudication Commissioner, which must be made within 21 days of the date that he receives written notice of the Adjudication Commissioner's decision.

17 April 2025

Ian A Gordon - Adjudication Commissioner