



Northern Ireland

Local Government Commissioner for Standards

Local Government Act (Northern Ireland) 2014

In the matter of Councillor Wesley Irvine

(Ards and North Down Borough Council)

Case Reference: 05839

Decision of the Northern Ireland Local Government Commissioner for Standards –

Margaret Kelly

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. The Local Government Act (Northern Ireland) 2014 (the 2014 Act) gives me, 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.

2. On 8 November 2023, a written allegation was received from Alderman Lorna McAlpine that Councillor Wesley Irvine (the Councillor), a member of Ards and North Down Borough Council (the Council) had, or may have, failed to comply with the Northern Ireland Local Government Code of Conduct for Councillors (the Code).
3. I have delegated the authority to investigate such allegations to the Deputy Commissioner and, subsequent to his investigation in this matter, he prepared an Investigation Report dated 11 October 2024.
4. I have had no role in the assessment of an allegation of a breach of the Code, and I was not involved in the investigation or the subsequent decision by the Deputy Commissioner to refer this matter to me for consideration for Adjudication.
5. On 5 November 2024, I informed the Councillor that I had considered the Investigation Report and had decided to adjudicate on the matter.
6. A number of Adjudication Reviews (which facilitate the efficient management of the Adjudication process) were held in the presence of the Councillor and the Deputy Commissioner. 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.
7. I have been assisted during the Adjudication by the Legal Assessor (Michael Wilson) who provides independent legal advice and assistance. This ensures that the Adjudication, including any Adjudication Reviews and Hearing, is conducted fairly and with due regard to the rights and interests of the Councillor. This is particularly important if, at any stage in the Adjudication, the Councillor is unrepresented or is not present. However, I am the sole decision maker.
8. At an Adjudication Review on 17 December 2024, the Councillor and the Deputy Commissioner confirmed that they were content that I should determine my Finding of Facts on the papers.

9. On 13 January 2025, I circulated my Stage 1 Findings of Fact to the parties. One additional fact (numbered 23) was subsequently added to the Findings prior to my Stage 2 Determination on Breach.
10. At an Adjudication Review on 17 January 2025, the Councillor and the Deputy Commissioner confirmed that they were content that I should determine my conclusions on the allegations of Breach of the Code without a Hearing.
11. Before concluding Stage 2, I afforded the parties the opportunity to provide me with written submissions on Breach.
12. Whilst the Findings of Fact were those which I considered were most relevant to the alleged breaches of the Code, in determining whether the Councillor has breached the Code, I also took into account the contents of the Investigation Report and the submissions received from the parties.
13. My determination on Breach was circulated to the parties on 4 March 2025.
14. The Councillor was unrepresented during Stages 1 and 2. Prior to the Stage 3 hearing on Sanction, he appointed Mr Jamie Bryson as his representative.
15. The public Hearing to determine Sanction was held on 13 June 2025. The Deputy Commissioner was represented by Mr Christopher Sherrard BL and Mr Bryson represented the Councillor.

The Allegations of Breach of the Code

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

1. Paragraph 4.16

'You must not:

(a) use, or attempt to use, your position improperly to confer on, or secure, an advantage for yourself or any other person;

(b) use, or attempt to use, your position improperly to seek preferential treatment for yourself or any other person; or

(c) use, or attempt to use, your position improperly to avoid a disadvantage for yourself or any other person, or to create a disadvantage for any other person.

These provisions apply both to your actions in your official capacity, including as a member of a body to which you are appointed by the council, and to any dealings you may have with the council on a personal level..."

2. Paragraph 4.17

'You must avoid any action which could lead members of the public to believe that preferential treatment is being sought.'

3. Paragraph 6.4

'You must declare any significant private or personal non-pecuniary interest in a matter as soon as it becomes apparent. You must then withdraw from any council meeting (including committee or sub-committee meeting) when the matter is being discussed. It is your own personal responsibility to determine, having regard to council advice and guidance, whether you have any such interest.'

4. Paragraph 8.1 sections (a) and (f)

'When participating in meetings or reaching decisions regarding the business of your council, you must:

*(a) do so objectively, on the basis of the merits of the circumstances involved,
and in the public interest;*

(f) act fairly and be seen to act fairly.'

and, that the Councillor may have failed to comply with the Principles of Public Duty, Selflessness, Integrity, Objectivity, Accountability, Openness and Honesty.

STAGE 1 – MY FINDING OF FACTS

1. The Councillor was first elected on 9 May 2005 as a member of the legacy North Down Borough Council.
2. Ards and North Down Borough Council became the successor Council with effect from 15 April 2015.
3. The Councillor has served continuously since 9 May 2005, and was a member of the Council at all relevant times.
4. Subsequent to his election in the 2019 and 2023 local government elections, and as required by section 7 of the Local Government Act (NI) 1972, the Councillor signed Declarations dated 20 May 2019 and 25 May 2023 respectively affirming that he had read and would observe the Code.
5. The Councillor also completed Declaration of Interests Forms in respect of the Council periods beginning 7 May 2019 and 21 May 2023 respectively in which he noted his interest in the 'Orange Order' and declared his membership.
6. The Councillor attended a meeting of the Council on 26 April 2023.
7. The Minutes of the meeting record (at item 3) that the Mayor asked for Declarations of Interest. At this stage, the Councillor did not declare any interest in item 12 –Ards and North Down Events and Festivals Fund 2023/24 – Tranche Two and Tranche One Update.
8. At all relevant times the Councillor was a member of a private Orange Order lodge: Loyal Order Lodge 1029, which falls under the jurisdiction of Bangor District Loyal Orange Lodge.
9. The Councillor had been District Secretary of Bangor District Orange Lodge for a period until January 2019.

10. At a meeting of the Bangor District Loyal Orange Lodge held on 20 January 2023, the Councillor was installed as an 'Outer Guard.'
11. On 30 January 2023, Comber District Loyal Orange Lodge submitted an application to the Council for funding for Large and Medium Events and Festivals taking place from 1 April 2023 to 31 March 2024.
12. On 31 January 2023, Bangor District Loyal Orange Lodge submitted an application to the Council for funding for Large and Medium Events and Festivals taking place from 1 April 2023 to 31 March 2024.
13. The Events and Festivals fund was co-funded by the Department for Communities whose Letter of Offer included a requirement that the Council must:
'Ensure that all events funded promote the principles of inclusion and comply with equality requirements'
and the Council's funding criteria included similar specific criteria which stated:
*'Applications will not be accepted for the following activity;
Any event/festival that is perceived to support or promote any religious or political dimension.'*
14. Council Officers had considered that the funding applications from both Lodges were ineligible under the relevant guidance and consequently they were not scored.
15. Both funding applications were discussed under Item 12 at the Council meeting on 26 April 2023. The Minutes record that in March 2023 the Council had requested that Officers review these applications which had been deemed ineligible by the scoring panel; that the panel had met again and had upheld its original decision that the applications were ineligible.
16. The Minutes of the 26 April 2023 meeting then record the Recommendation that both applications *'are ineligible for assessment'*.
17. The Councillor did not leave the meeting during this discussion but he did declare his membership of the Orange Order.
18. The Councillor initially proposed that the 'Council recognises the cultural significance of the Twelfth of July celebrations and awards Bangor District Loyal Orange Lodge and Comber District Loyal Orange Lodge tranche 1 funding at the level requested in their applications.' This proposal was not voted on.

19. The Councillor subsequently made an amended proposal that ‘the Council recognises the cultural significance of the Twelfth of July celebrations and scores both applications from Bangor District Loyal Orange Lodge and Comber District Loyal Orange Lodge for tranche 1 funding, bringing back the decision at the earliest opportunity.’
20. This amended proposal was approved by a majority of Councillors; 25 voting in favour and 10 against.
21. The Councillor voted in favour of his amended proposal.
22. The Minutes of the Council meeting on 12 June 2023 record (under Item 12) that Council officers had met on 4 May 2023 and had scored both applications, against the agreed scoring matrix and the pass mark of 55%; and that neither application had met the pass mark to qualify for funding.
23. At this Council meeting on 12 June 2023 the Councillor did not declare an interest at Item 3 (Declarations of Interest); however, when Item 12 was being considered, the Councillor did not withdraw from the meeting but he declared his membership of the Orange Order and participated in the discussion.

STAGE 2 – MY DETERMINATION ON BREACH

The evidential test is whether or not it has been established, on the ‘balance of probabilities’, that there had been a failure to comply with the Code, and I have applied this test to my determination of Breach.

I have taken into account the Findings of Fact, together with the Investigation Report dated 11 October 2024, the Submissions on Breach received from the Deputy Commissioner dated 3 February 2025, and the contents of the Councillor’s e-mails dated 11 December 2024 and 7 January 2025 (in so far as they related to the alleged breaches of the Code).

Application of the Code

I have also taken into account the following general provisions of the Code:

1. The Code applies to all Councillors. Parts 1 to 8 of the Code, which include Principles of Conduct, Rules of General Conduct, Rules relating the Registration, Disclosure and Declaration of interests, and Rules of General Conduct, came into force on 28 May 2014.
2. The Code is supplemented by detailed Guidance for Councillors published by the Commissioner in May 2017.
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.
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.
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.
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.
7. Part 3 of the Code outlines the 12 principles of conduct which underpin the rules of conduct. These include the principles of Public Duty, Selflessness, Integrity, Objectivity, Accountability, Openness and Honesty referred to in the allegations of Breach of the Code.

Deputy Commissioner's Submissions on Breach

In summary, the Deputy Commissioner submitted as follows:

Potential Breach 1 (Paragraph 4.16)

Sub paragraphs 4.16 (a) and (b) require that councillors do not use or attempt to use their position to confer on or secure an advantage for themselves or any other, or to seek preferential treatment for themselves or another person. The word '*person*' extends to include organisations such as the Bangor and Comber District LOLs, for whom the Councillor

sought to secure an advantage by proposing that they be scored despite being ineligible under the relevant funding criteria.

Potential breach 2 (Paragraph 4.17)

Paragraph 4.17 requires that councillors avoid action that could lead members of the public to believe that preferential treatment is being sought. Paragraph 4.8.5 of the Commissioner's Guidance on the Code states that a councillor should avoid conduct that may give the 'impression' that preferential treatment is being sought, and identifies the test as *'...whether a member of the public - who knew all of the relevant facts - would reasonably consider that preferential treatment was being sought.'*

The Councillor's suggestion that because no member of the public had made a complaint there had been no breach of the Code was a failure to understand this proper application of this test.

Potential Breach 3 (Paragraph 6.4)

This requires that councillors must declare any significant private or personal non-pecuniary interest as soon as it becomes apparent, and then withdraw from the meeting where the issue is being discussed. It is a councillor's personal responsibility, and there is no obligation or requirement on Council officers to advise a councillor of their responsibilities during a meeting as suggested by Councillor Irvine in his response to the Commissioner dated 7 January 2025.

Paragraph 5.2 (i)(ee) of the Code states that where a councillor has membership or holds a position of general control or management in relation to private clubs, societies or associations operating within the Council district, this is considered an interest.

Given the Councillor's role and honorary officer position in the Bangor District LOL at the time of the relevant Council meeting on 26 April 2023, he held a significant private or personal non-pecuniary interest in relation to that organisation, and should have declared his interest at the earliest opportunity, which was at item 3 on the agenda (Declarations of Interest). Declaring his interest at item 12 was not the earliest opportunity for him to do so.

In addition, having declared an interest, the Councillor was then obliged to leave the meeting. A similar situation arose at the Council meeting on 12 June 2023.

Potential breach 4 (Paragraph 8.1 (a) and (f))

This requires that when participating in meetings or reaching decisions councillors must act objectively, consider the merits of situation, consider the public interest and act fairly.

Paragraph 4.15.3 of the Commissioner's Guidance states councillors should make decisions '*objectively and with an open mind.*' Their decisions must '*take account of all the relevant facts and policies.*' In addition, if a councillor seeks advice, or advice is offered by council officials, under their statutory functions and duties, councillors '*...must have regard to that advice before [they] reach [their] decision.*'

The funding criteria excluded

'Any event/festival that is perceived to support or promote any religious or political dimension'.

The Councillor did not suggest that the applications from Bangor and Comber Districts LOLs were eligible but an objective assessment by Council officers indicated that both proposed events (The Boyne Anniversary and Celebration of Orange Culture) fell within this criterion for exclusion.

By remaining in the meeting on 26 April 2023, the Councillor did not act objectively in considering the recommendation from Council officers and his view was influenced by his declared conflict of interest. The Council (and the Department for Communities) set criteria for the relevant funding scheme which excluded certain types of events, and any objective assessment would agree with the recommendation of Council Officers that these two events were ineligible.

Councillor's Submissions

The Councillor's submissions addressed some elements of the factual content of the Investigation Report dated 11 October 2024, as well as the four allegations of Breach of the Code.

I carefully considered the Councillor's comments on the factual content of the Investigation Report, but did not consider that my Findings of Fact required any amendment.

In relation to the allegations of Breach, the Councillor stated the following:

1. In his e-mail dated 11 December 2024:

"[W]hilst I except (sic) the findings of the [investigation] report, I fully reject their conclusions on any breaches of the code that were listed. I understand that I should have withdrawn from the Council meeting and not voted or spoken on the matter and I am on record as saying if the same scenario arose again I would do things differently. I have outlined why I feel that I need to speak and make a proposal and wanted to ensure Council were complying with the criteria that had been set."

2. In his e-mail dated 7 January 2025:

'nor was he advised... by any Council officer'

to leave the meeting when Council members considered the report from officers on the funding application of Bangor District LOL.

3. In the same e-mail of 7 January 2025:

'...Council officers put forward recommendations and it is for Councillors to decide whether to propose the recommendation or put forward an alternative proposal. Councillor Irvine did put forward a revised proposal that the application to be rescored, this is perfectly reasonable if a funding application score is thought to wrong based on previous applications which had been successful.'

In relation to the specific allegations of breach, the Councillor's submissions can be summarised as follows:

1. Paragraph 4.16

1. The applications were for an organisation and not '*a person*';
2. There is no proof that he benefited from his proposal;
3. Nor is there any proof a person benefited as no funding ultimately was awarded on this occasion;
4. Even if funding had been awarded to Bangor District LOL, they do not benefit from it as it all has to go to a community fun day for the whole community;
5. Bangor District LOL had received funding previously on many occasions when applying for similar grants, therefore it is only natural for a councillor to query, question and hold Council officers to account;
6. It is perfectly acceptable that councillors can change or make amendments or indeed oppose Council officers' decisions;
7. His initial proposal was not voted on.

2. Paragraph 4.17

1. There is an assumption by the Deputy Commissioner that the public believe there was preferential treatment sought, but not one single person complained to him, or to the Council, or to Bangor District LOL;
2. The only complaint was by an elected member of a political party to the Commission;
3. Bangor District LOL had been eligible on previous occasions and he could not understand why this time they had not been successful.

3. Paragraph 6.4

1. He did declare an interest which was the correct thing to do;
2. No Council officer advised him of a conflict of interest;
3. No other members of the Council who were members of the Orange Order left the meeting;

4. He did not declare he was a member of a private Lodge, as this is essentially part of Bangor District LOL;
5. His lodge has nothing to do with Bangor District LOL's application for funding.

4. Paragraphs 8.1 (a) and (f)

1. The councillor's role is to hold Council officers to account and to question proposals put forward by council officials;
2. It is not the role of a councillor to just rubber stamp council officer's proposals. That is the role of a councillor to ask questions and to challenge if disagreeing what is in front of them;
3. It is ultimately the councillors that make policy and decisions not Council officers;
4. He had sight of the papers for that meeting in advance and had time to read what the officers' proposals were, and had the perfect right to disagree or agree.

In conclusion, the Councillor stated:

1. He did declare a conflict of interest;
2. He did make a proposal but it was never voted on or passed by Council as he withdrew it;
3. He put forward a further proposal which was passed in respect of which numerous Council members of the Orange Order voted to support it;
4. There were no advice given by council officials that there was a conflict of interest;
5. No member of the public made a complaint so there was zero public interest or perception that can be proven;
6. He believed that the Council's scoring of the application was wrong based on previous successful applications by Bangor District LOL.

My Reasons for Determination on Breach

It is clear that the Code applied to the Councillor - he had signed Declarations, on 20 May 2019 and 25 May 2023 respectively, affirming that he had read and would observe the Code. Furthermore, the Councillor also completed a Declaration of Interests Form, in respect of the

Council periods beginning 7 May 2019 and 21 May 2023 respectively, in which he registered his interest in the 'Orange Order' and declared his membership.

The facts of this matter are concise. At all relevant times, the Councillor was a member of a private Orange Order lodge: Loyal Order Lodge 1029, which falls under the jurisdiction of Bangor District Loyal Orange Lodge (Bangor District LOL). In addition, he had been District Secretary of Bangor District LOL for a period until January 2019 and had been installed as an 'Outer Guard' at a meeting of the Bangor District LOL held on 20 January 2023.

When the Councillor participated in a meeting of the Council on 26 April 2023, he did not declare a conflict of interest when the Mayor asked for Declarations of Interest (as recorded at Item 3 of the Minutes). This was the earliest opportunity for the Councillor to have done so. The funding applications made by Comber District Loyal Orange Lodge (Comber District LOL) and Bangor District LOL respectively came up for consideration (at Item 12 as recorded in the Minutes) at which stage the Councillor did declare his membership of the Orange Order but did not then withdraw from the meeting.

A similar circumstance arose at the subsequent Council meeting on 12 June 2023. On both occasions, the Councillor spoke about the matters under discussion.

In addition, at the 26 April 2023 meeting, the Councillor proposed that the Council award both Bangor and Comber District LOLs funding despite both organisation's ineligibility under the funding criteria. This proposal was not voted on, but the Councillor then made an amended proposal that the applications should nonetheless be scored, and he voted in favour of his own amended proposal.

Bearing this in mind, I turn to the specific allegations of Breach of the Code:

1. Paragraph 4.16

I am satisfied that the reference in the Code to a 'person' extends to organisations such as the Bangor and Comber District LOLs. In addition, it is not necessary, to find a breach of this provision, for there to be proof of an actual benefit to any person.

I am also satisfied in all the circumstances, and, in particular, given the Councillor's membership of the Orange Order and his relationship with the Bangor District LOL, that he had used his position on the Council improperly to seek preferential treatment for either or both the Bangor District LOL and the Comber District LOL. This arose from his proposal that their funding applications should be scored despite being ineligible under the relevant funding criteria, and in the context of the clear advice from the Council officials.

2. Paragraph 4.17

The Deputy Commissioner has correctly drawn attention to paragraph 4.8.5 of the Commissioner's Guidance on the Code. The Guidance emphasises that a councillor has a clear obligation to avoid conduct that may give the *impression* that preferential treatment is being sought. The test is not only what the councillor did (or did not do) but also whether a member of the public, who knew all the relevant facts, would reasonably consider that preferential treatment was being sought.

I do not accept the Councillor's assertions in his submissions on this provision of the Code. The objective consideration of what a fully informed member of the public might think, is not answered by an assertion (or the fact) that no one complained to him, or to the Council or to the Bangor District LOL about the conduct in question. For the purposes of the Code, the proper consideration of what constitutes '*members of the public*' and what they might think, is more broadly based and it is not defined by, or restricted, to what people in a local area, such as the Councillor's local ward or even his Council area, think.

The Councillor was a member of the Orange Order and he had for a period until January 2019 been a District Secretary of the Bangor District LOL. At a time when he held the position of '*Outer Guard*' in the Bangor District LOL he proposed that the Council award both Bangor and Comber District LOLs funding despite both organisations' ineligibility under the funding criteria; and, when this did not proceed, he proposed that the applications be scored.

I therefore consider that a member of the public who was aware of these facts would reasonably conclude that the Councillor was seeking preferential treatment for both Bangor and Comber District LOLs.

3. Paragraph 6.4

Paragraph 6.3 of the Code obliges councillors to ‘...*declare any significant private or personal non-pecuniary interest in a matter arising at a council meeting etc...*’.

The Guidance to the Code states at paragraph 4.13.9:

The Code requires that you declare “any significant private or personal non-pecuniary interests” in a matter coming before a meeting of your council as soon as it becomes apparent to you. Non-pecuniary interests are those that do not involve business or financial matters and can include, for example, those interests that arise through a position of responsibility in, or membership of, a club, society or organisation. A non-pecuniary interest will be considered to be ‘significant’ if:

- *it is one that falls within any of the categories of interest listed in paragraph 5.2 of the Code; or*
- *you anticipate that a decision on the matter coming before the meeting of your council might reasonably be considered by a member of the public to benefit or disadvantage you to a greater extent than other council constituents.*

In my view and bearing in mind the provision of paragraph 5.2 (i)(ee) of the Code (as previously referred to), the Councillor’s membership of the Orange Order, and his position as an ‘Outer Guard’ constituted both a significant private and personal non-pecuniary interest in relation to the funding applications.

Although the Councillor had registered his interest by completing Declaration of Interest Forms subsequent to his election to the Council in 2019 and 2023, the registration of his interest in that manner is separate to the requirement for the declaration of a conflict of interest in relation to specific Council business.

Both this provision of the Code, and the Guidance on the Code, make it clear that it is a councillor's personal responsibility to determine if they have a significant private or personal non-pecuniary interest in any matter coming before the Council, having regard to any advice and guidance they may have received. Given the personal nature of the obligation, it is therefore irrelevant, as the Councillor has submitted, that no Council officer advised him of a conflict of interest.

The Councillor accepts in his submissions that he had prior sight of the papers for the Council meeting on 26 April 2023 and it ought to have been apparent to him that he would have a conflict of interest in relation to the funding applications. The Councillor should therefore have declared his conflict of interest at Agenda Item 3 (Declaration of Interest). Although he did this when the funding applications came up for consideration at Item 12, he then failed to withdraw from the meeting as he was obliged to do, and I am satisfied that there are no circumstances which would have permitted him to remain and or to contribute to the consideration of the specific funding applications. A similar consideration applies to his conduct at the 12 June 2023 meeting.

In his e-mail dated 11 December 2024 the Councillor states:

'I understand that I should have withdrawn from the Council meeting and not voted or spoken on the matter and I am on record as saying if the same scenario arose again I would do things differently. I have outlined why I feel that I need to speak and make a proposal and wanted to ensure Council were complying with the criteria that had been set.' (emphasis added).

This emphasised text is inappropriate, and it is important to record that a desire to see that a Council complies with its own processes cannot override a councillor's obligation to comply with paragraph 6.4 of the Code.

It is important to add that a finding of this Breach (or any of the other Breaches of the Code alleged) does not prevent a councillor from raising queries about the eligibility criteria for any funding programme, but this cannot be done within the context of the Council's consideration

of those specific funding applications in which the councillor had a significant private or non-pecuniary interest.

For completeness, I note the Councillor's submission that other councillors who were members of the Orange Order voted to support his amended proposal. However, the actions of those councillors are not within the scope of this Adjudication.

4. Paragraph 8.1 (a) and (f)

I cannot accept the Councillor's submissions on this breach. It is, of course, a councillor's right to hold council officials to account, to question and scrutinise their proposals, and to determine policy. However, this must be done in a manner that is consistent with a councillor's obligations of the Code and that also takes into account the Guidance on the Code.

I have determined that the Councillor should have withdrawn from the Council meeting on 26 April 2023 during the consideration of the funding applications. The Councillor's action in remaining at the meeting, and the degree of his subsequent participation in the consideration of the relevant funding applications, taking into account the prior assessment by Council officials, displayed a lack of objectivity and a failure to consider the merits of the circumstances involved. In my opinion, the public could not be satisfied that the Councillor had acted, or could be seen to have acted, fairly in relation to this matter.

Article 10 ECHR

Before concluding on the Councillor's alleged Breaches of the Code, I have had regard to Article 10 of the European Convention on Human Rights which 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 and well referenced case Heesom v Public Services Ombudsman for Wales [2014] 4 All ER 269.

In determining whether there has been a contravention of the Code I have taken the following approach:

First, I considered whether the Facts found I could conclude, on the balance of probabilities, that the Councillor had failed to comply with the applicable provisions of the Code. I have answered this in the affirmative in relation to each of the four Breaches alleged.

Secondly, I then considered in relation to each Breach whether such a finding in itself was *prima facie* a breach of the right to freedom of expression under Article 10. I concluded that this was so in each case, in that the Councillor's behaviour took place in respect of a debate on questions of public interest so that the enhanced protection under Article 10 applied to him.

Thirdly, I then proceeded to consider whether the restriction involved by a finding of Breach in each case was justified by Article 10(2) ECHR, which allows restrictions that are necessary in a democratic society.

Accordingly, I considered whether any interference to freedom of expression which I was considering making by determining that breaches of the Code have occurred (and in applying a sanction), was justified with reference to Article 10(2).

This is an evaluative judgment and involves a consideration of the following:

- 1) Is the restriction prescribed by law? The answer to this is 'yes' as both the Code and my remit to adjudicate on alleged contraventions of them are prescribed by the 2014 Act.
- 2) Is the restriction necessary in a democratic society? Likewise, the answer to this is 'yes'. I am satisfied that the intention of the Code, and the imposition of any sanction if a breach is found, is to enable local government to function effectively and with the confidence of the general public whilst upholding and improving the standard of

conduct expected of councillors. The obligations created by the Code are imposed for a legitimate aim, and the interference with the Councillor's rights is proportionate.

In conclusion, I found that the Councillor was in breach of the Code in respect of each of the four allegations set out above.

STAGE 3 – SANCTION

The principal purpose of a Sanction is the preservation of public confidence in local government representatives, and 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 have considered the submissions on Sanction received from the Deputy Commissioner dated 21 March 2025, from the Councillor in his e-mail dated 10 April 2025, and from Mr Bryson dated 27 April 2025. In addition, I have noted the character references received on his behalf, from a number of colleagues of different political affiliations, from the MP for North Down and the Grand Orange Lodge of Ireland. Whilst most of these references do not expressly note the specific context of this Adjudication Hearing, they all speak positively of the Councillor's work and commitment.

In determining Sanction I have also considered the Sanction Guidelines. It is important to reiterate the importance of preserving public confidence in local government representatives. The legitimate purpose of the Code is to outline and to secure high standards of conduct by elected councillors. It follows that the purpose of a Sanction is also to preserve confidence in local government representation.

In this case, I have had regard to the following **mitigating** factors:

- The Councillor cooperated fully with the Investigation conducted by the Deputy Commissioner.
- He has also engaged fully with the Adjudication, including attending all Adjudication Reviews (which facilitate the efficient management of the Adjudication), and today's Sanction Hearing.
- The Councillor has acknowledged that he has breached the Code and has expressed regret for his actions including apologising to this Office (albeit belatedly and once Breach had already been determined).
- The Councillor is a long serving member of the Council (although this may also be an aggravating factor).
- He was first elected to office on 9 May 2005 and had a previous record of good service with no breaches of the Code.
- There is no evidence of any further incidents of non-compliance with the Code since the allegation giving rise to the Adjudication was made.
- The positive character references.

I have also noted a number of **Aggravating** factors:

- The Councillor is an experienced councillor.
- His failure to comply with the Code occurred on two occasions.
- The Breaches of the Code were not inadvertent.

- At the Council meetings on 26 April 2023 and 12 June 2023 the Councillor did not follow the example of other Councillors either in declaring an interest at the appropriate point in the meeting or in leaving the meeting after he declared an interest when the relevant issue came up for consideration.
- The Councillor had not displayed insight into his actions until I had determined that he had breached the Code.
- The Councillor made a proposal (which ultimately was not voted on) to provide funding to Bangor and Comber District LOLs despite the fact they had not been subject to scoring by officers.

Article 10 ECHR

In my consideration of Sanction, I have also had regard to the provisions of Article 10. There have been a number of cases on the application of restrictions under Article 10(2) on freedom of expression. Some of the principles established by the Courts include:

- That enhanced protection of freedom of expression applies to all levels of politics, including local government.
- Political expression is a broad concept.
- The right to freedom of expression is a qualified right and is not absolute. Restrictions may be imposed to ensure that the conduct of public life at local government level does not fall below a minimum level. This is so that public confidence in democracy is not eroded.
- In determining whether a restriction is legitimate, consideration should be given to whether or not there were sufficient other opportunities for the individual to achieve their objective.

Much of what I have said in my consideration of the interrelation of Article 10 ECHR to the determination of Breach also applies to my consideration of Sanction. As Counsel for the Deputy Commissioner observed, the Assembly has legislated for the Standards regime which pursues the legitimate and proportionate aim that councillors should be subject to standards of conduct and that the public should expect that those standards are maintained; hence the

creation of the Code of Conduct, the Sanctions guidelines, and the establishment of this Adjudication process.

In his submissions, Mr Bryson drew attention to the judgment of Maguire J. *in the Matter of Jolene Bunting [2019] NIQB 36*, and referred in particular to paragraphs 69 and 70 of that judgment, in support of his argument that the sanction for each complaint, in respect of which the Councillor has been found to be in Breach of the Code, had to be considered individually. I do not accept that proposition. The Judge in the *Bunting* case was looking at a different and discreet issue, which was the imposition of an Interim Suspension and, to that end, the application of the relevant statutory test (under section 60 (1) of the 2014 Act), at a stage in those proceedings where none of the Breaches of the Code alleged against Ms Bunting had been determined.

In this case, Breach has been determined and what is of interest from the *Bunting* decision is the Judge's general consideration of the Code and his comments:

- at paragraph 47 - *'the court must take into account the wide terms in which the Code has been drafted, bearing in mind both the specific rules found in the Code and the principles of conduct'*; and
- at paragraph 48 – *'In considering the above and other provisions within the principles and the rules it seems to the court that they have been drafted in a broad but flexible manner so that the behaviour of a councillor or a course of behaviour may at the same time offend against a number of principles or rules or a mixture of both.'*

I am satisfied that the imposition of a Sanction is not incompatible with the Councillor's rights under Article 10.

The available Sanctions are referred to in paragraph 42 of the Adjudication Procedures and are set out in further detail at paragraphs 7 -22 of the Sanctions Guidelines:

1. **No action** - This is not an appropriate Sanction in this case given the conduct which has given rise to my determination on breach of the Code and considering the public interest.
2. **Censure** - would only be appropriate where the breach of the Code was relatively minor in nature. I do not consider that the breaches in this instance were minor nor would censure represent an appropriate Sanction given the importance of ensuring councillors are aware of their obligations in respect of declaring interests and the need to improve standards of conduct and uphold the public interest.
3. **Partial Suspension** - Suspending the Councillor from a particular aspect of Council work would not uphold the public interest given that the Breaches of the Code in this matter did not relate to any *particular* aspect of Council business but rather the Councillor's conduct arose in the course of two full Council meetings.
4. **Suspension** - The Sanctions Guidelines provide 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.
5. **Disqualification** - is the most severe option open to me and the factors which may lead to disqualification are listed in the Sanction Guidelines at paragraph 18. I am satisfied that, having considered those Guidelines, the conduct in this case does not merit disqualification.

Decision

I note the previous Adjudication decisions in this jurisdiction referred to by the Deputy Commissioner and to other local government decisions in Wales and Scotland which he also outlined. These decisions are helpful and I have taken them into account, but it is important to note that each case must be decided on its own particular facts.

In his submissions Mr Bryson concludes that a censure or '**suspended suspension**' would meet the requirements of the case. However, I should point out that there is no statutory or other basis for such a course of action.

Both Mr Sherrard BL and Mr Bryson commented on whether any delay in the Investigation and or the Adjudication processes adversely impacted on the Councillor's Article 6 ECHR rights. At the beginning of this Decision, I set out the chronological history of the matter from the initial receipt of an allegation on 8 November 2023 to the Sanction Hearing on 13 June 2025. I do not consider that there has been any material delay and as Mr Bryson himself acknowledged in his oral submissions on this issue, there was no '*get out of jail, free pass*'.

In my view a period of Suspension is the appropriate Sanction. In considering the proportionality of such a Sanction, I consider that this is the least severe Sanction required in the circumstances of this case to meet the objectives of the Sanctions' regime. Whilst the period of suspension may have some impact on the Councillor's entitlement to allowances I consider that this will be limited (and I note that in any event the loss of allowances is a matter for the individual Council).

Taking everything into consideration, including the Sanctions Guidelines as well as the previous adjudication decisions and the mitigating factors outlined above, I consider a suspension period of three months to be both appropriate and proportionate in this matter. The period of suspension takes effect from the date of this Decision and will end on 22 September 2025.

In coming to this Decision, I have taken into account the positive references provided for the Councillor although only one of these expressly referenced the context of this Sanction Hearing. But for these positive references and the mitigating factors identified, the appropriate Sanction in this case would have been five months.

Finally, I wish to make it clear that this Adjudication was not about any particular organisation that sought Council funding, nor was it about any specific funding programmes undertaken by the Council. Rather it was about the mistaken approach of the Councillor and the

inappropriate manner in which he sought to articulate his concerns in the context of his obligations under the Code.

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.

23 June 2025

Margaret Kelly
Local Government Commissioner for Standards