

### **2014 CHAPTER 8**

### PART 9

# CONDUCT OF COUNCILLORS

#### Decisions and recommendations

## **Decision following report**

- **59.**—(1) The Commissioner may make an adjudication on any matter by deciding whether or not any person to which that matter relates has failed to comply with the code of conduct.
- (2) Where the Commissioner decides that a person has not failed to comply with the code of conduct, the Commissioner must give notice to that effect to the clerk of the council concerned.
- (3) Where the Commissioner decides that a person has failed to comply with the code of conduct, the Commissioner must decide whether no action should be taken or whether the nature of the failure is such that the Commissioner should—
  - (a) censure the person;
  - (b) suspend or partially suspend the person from being a councillor; or
  - (c) disqualify the person for being, or becoming (whether by election or otherwise), a councillor.
- (4) Where the Commissioner makes such a decision as is mentioned in subsection (3)(a), the Commissioner must censure the person in such terms as the Commissioner thinks appropriate.
- (5) Where the Commissioner makes such a decision as is mentioned in subsection (3)(b), the Commissioner must suspend or partially suspend the

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person from being a councillor for such period as the Commissioner thinks appropriate but not exceeding one year or, if shorter, the remainder of the person's term of office.

- (6) Where the Commissioner makes such a decision as is mentioned in subsection (3)(c), the Commissioner must disqualify the person for being, or becoming (whether by election or otherwise), a councillor for such period as the Commissioner thinks appropriate but not exceeding five years.
- (7) Where the Commissioner decides that a person has failed to comply with the code of conduct but should not be censured, suspended or disqualified as mentioned in subsection (3), the Commissioner must give notice to the clerk of the council concerned—
  - (a) stating that the person has failed to comply with the code of conduct;
  - (b) specifying the details of that failure; and
  - (c) stating that the Commissioner has decided not to censure, suspend or disqualify the person.
- [F1(7A)] Where the Commissioner censures a person under subsection (4),the Commissioner must give notice to the clerk of the council concerned—
  - (a) stating that the person has failed to comply with the code of conduct;
  - (b) specifying the details of that failure; and
  - (c) stating that the person is censured in the terms the Commissioner has decided.]
- (8) Where the Commissioner suspends or partially suspends a person under subsection (5), the Commissioner must give notice to the clerk of the council concerned—
  - (a) stating that the person has failed to comply with the code of conduct;
  - (b) specifying the details of that failure; and
  - (c) stating that the person is suspended or partially suspended for the period, and in the way, which the Commissioner has decided.
- (9) Where the Commissioner disqualifies a person under subsection (6), the Commissioner must give notice to the clerk of the council concerned—
  - (a) stating that the person has failed to comply with the code of conduct;
  - (b) specifying the details of that failure; and
  - (c) stating that the person is disqualified for being, or becoming (whether by election or otherwise), a councillor for the period which the Commissioner has decided.
  - (10) A copy of any notice under this section—
    - (a) must be given to any person who is the subject of the decision to which the notice relates; F2...

- (b) must be published in one or more newspapers circulating in the district of the council concerned [F3 and.
- (c) may be published elsewhere.]
- (11) Where the person concerned is no longer a councillor of the council concerned but is a councillor of another council—
  - (a) a copy of any notice under this section to the clerk of the council concerned must also be given to the clerk of that other council; and
  - (b) the reference in subsection (10)(b) to the council concerned is to be treated as including a reference to that other council
- (12) The Commissioner must take reasonable steps to inform any person who made any allegation which gave rise to the adjudication of the Commissioner's decision under this section.
- (13) A person who is censured, suspended or disqualified by the Commissioner as mentioned in subsection (3) may appeal to the High Court if the High Court gives the person leave to do so.
- (14) An appeal under subsection (13) may be made on one or more of the following grounds—
  - (a) that the Commissioner's decision was based on an error of law;
  - (b) that there has been procedural impropriety in the conduct of the investigation under section 58;
  - (c) that the Commissioner has acted unreasonably in the exercise of the Commissioner's discretion;
  - (d) that the Commissioner's decision was not supported by the facts found to be proved by the Commissioner;
  - (e) that the sanction imposed was excessive.

#### **Textual Amendments**

- F1 S. 59(7A) inserted (1.4.2016) by Public Services Ombudsman Act (Northern Ireland) 2016 (c. 4), s. 64, Sch. 7 para. 3 (with Sch. 2 para. 9)
- Word in s. 59(10)(a) omitted (1.4.2016) by virtue of Public Services Ombudsman Act (Northern Ireland) 2016 (c. 4), s. 64, Sch. 7 para. 4(a) (with Sch. 2 para. 9)
- F3 S. 59(10)(c) and preceding word inserted (1.4.2016) by Public Services Ombudsman Act (Northern Ireland) 2016 (c. 4), s. 64, Sch. 7 para. 4(b) (with Sch. 2 para. 9)

## **Commencement Information**

II S. 59 in operation at 2.6.2014 by S.R. 2014/153, art. 2, Sch. 1

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## **Decisions on interim reports**

- **60.**—(1) Where the prima facie evidence is such that it appears to the Commissioner—
  - (a) that the person who is the subject of an interim report has failed to comply with the code of conduct:
  - (b) that the nature of that failure is such as to be likely to lead to disqualification under section 59(3)(c); and
  - (c) that it is in the public interest to suspend or partially suspend that person immediately,

the Commissioner may give notice to the clerk of the council concerned that that person is suspended or partially suspended from being a councillor for such period and in such way as may be specified in the notice.

- (2) The period specified in a notice under subsection (1) must not exceed six months or (if shorter) the remainder of the person's term of office.
- (3) The effect of a notice under subsection (1) is to suspend or partially suspend the person concerned as mentioned in that subsection.
- (4) A decision of the Commissioner under this section does not prevent the Commissioner from continuing with the investigation under section 55 which gave rise to the interim report concerned and producing a report under section 57, or a further interim report under section 58, in respect of any matters which are the subject of the investigation.
- (5) The suspension or partial suspension of any person under this section must not extend beyond the day on which a notice under section 59 is given to the clerk of the council concerned with respect to that person.
- (6) A copy of any notice under this section must be given to any person who is the subject of the notice.
- (7) Where a person is no longer a councillor of the council concerned but is a councillor of another council—
  - (a) the notice under subsection (1) must be given to the clerk of that other council and a copy of that notice must be given to the clerk of the council concerned;
  - (b) the reference in subsection (5) to the clerk of the council concerned is to be construed in accordance with section 59.
- (8) The Commissioner must take reasonable steps to inform any person who made any allegation which gave rise to the investigation under section 55 of the Commissioner's decision under this section.
- (9) A person who is suspended (or partially suspended) by the Commissioner by notice as mentioned in subsection (1) may appeal to the High Court if the High Court gives the person leave to do so.

- (10) An appeal under subsection (9) may be made—
  - (a) against the suspension (or partial suspension);
  - (b) against the length of the suspension (or partial suspension).

#### **Commencement Information**

I2 S. 60 in operation at 2.6.2014 by S.R. 2014/153, art. 2, Sch. 1

#### Recommendations

- **61.**—(1) The Commissioner, having adjudicated on any matter, may make recommendations to a council about any matters relating to—
  - (a) the exercise of the council's functions; or
  - (b) the failure to observe the code of conduct.
  - (2) The Commissioner—
    - (a) must send a copy of any recommendations under subsection (1) to the Department; and
    - (b) may send a copy of those recommendations to any other public body.
- (3) A council to which recommendations are made under subsection (1) must—
  - (a) consider the recommendations; and
  - (b) within such period beginning with the day on which the recommendations are received as the Commissioner may specify, prepare a report for the Department giving details of what action the council has taken or is proposing to take as a result of the recommendations.
- (4) A council's function of considering a report under subsection (3) may be discharged only by the council (and accordingly, is not to be a function to which section 7 applies).
- (5) If the Department is not satisfied with the action the council has taken or proposes to take in relation to the recommendations, the Department may require the council to publish a statement giving details of the recommendations made by the Commissioner and of the council's reasons for not fully implementing the recommendations.

#### **Commencement Information**

I3 S. 61 in operation at 2.6.2014 by S.R. 2014/153, art. 2, Sch. 1

# **Changes to legislation:**

There are currently no known outstanding effects for the Local Government Act (Northern Ireland) 2014, Cross Heading: Decisions and recommendations.