



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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Paper 000/00

May 2021

NIAR 103-2021

**RaISe**

# Investigation of complaints against local councillors for breaches of codes of conduct

## 1 Introduction

This briefing paper has been prepared following a request from the Audit Committee. The committee asked for information on the position in other UK jurisdictions in relation to the investigation and adjudication of complaints against councillors who may have failed to comply with their relevant Code of Conduct. The Republic of Ireland has also been included to give a comprehensive overview.

Table 1 provides an overview of the research findings before examining each jurisdiction in greater detail.

**Table 1: Overview of complaints and sanctions regimes at local council level in the UK and Republic of Ireland**

	England	Scotland	Wales	Republic of Ireland
<b>Code of Conduct</b>	<p>The Localism Act 2011 requires local councils to maintain a code of conduct.</p> <p>Local councils are required to establish mechanisms to investigate alleged breaches of the code.</p>	<p>Under the Ethical Standards in Public Life etc. (Scotland) Act 2000 local councils in Scotland are required to have a Code of Conduct for their elected and appointed members. There is one Code of Conduct, approved by the Scottish Parliament, that applies to all 32 councils in Scotland.</p>	<p>The Local Government Act 2000 created a new ethical framework for local government in Wales.</p> <p>The National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) was given the power to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales.</p> <p>This power was transferred to the Welsh Ministers by the Government of Wales Act 2006.</p>	<p>The Local Government Act 2001 sets out an “ethical framework that that imposed a statutory duty on all in the local government service to maintain proper standards of integrity, conduct and concern for the public interest”.</p>
<b>Method of investigation</b>	<p>The Localism Act 2011 requires councils to appoint at least one ‘independent person’ to advise the council before it can arrive at a decision on a complaint.</p> <p>Many councils maintain standards committees to make decisions on alleged breaches, taking into account the view of the independent person, although this is not a legal requirement.</p>	<p>The Standards Commission is the body charged with ensuring adherence to the Code of Conduct. However, the Commissioner for Ethical Standards, who is separate to the Standards Commission, is also required to investigate alleged breaches of a council’s Code of Conduct.</p> <p>The Commissioner then reports to the Standards Commission which will decide what, if any, action is appropriate. The Standards Commission can also direct the Ethical Standards Commissioner to carry out further investigations.</p>	<p>The Public Services Ombudsman for Wales has responsibility for investigating complaints against councillors for alleged breaches of the code of conduct.</p>	<p>Where the Council’s Ethics Registrar becomes aware of a possible contravention by a councillor of a provision of Part 15 of the Local Government Act 2001, it is his or her duty to bring it to the attention of the Chief Executive and the Cathaoirleach of the Council (or the Chief Executive if the matter concerns the Cathaoirleach). It is a matter for the Chief Executive and the Cathaoirleach (or the Chief Executive, as appropriate) to consider what action should be taken in accordance with the legislation. This may include investigation, referral to the Director of Public Prosecutions or the making of a complaint by the</p>

				Cathaoirleach/Chief Executive to the Standards Commission.
<b>Sanctions</b>	<p>Sanctions can include an apology, censure or withdrawal of certain facilities or access to council buildings.</p> <p>However, breaches relating to pecuniary interests, such as the failure to disclose relevant interests or participating in a meeting or voting when a conflict caused by a failure to disclose relevant pecuniary interests, are criminal offences.</p>	<p>Sanctions include:</p> <p>(a) censuring the councillor;</p> <p>(b) suspending, for a period not exceeding one year, the councillor's entitlement to attend one or more but not all of the following:</p> <p>i) all meetings of the Council;</p> <p>ii) all meetings of one or more committees or sub-committees of the council;</p> <p>iii) all meetings of any other body on which that councillor is a representative or nominee of the council</p> <p>(c) suspending, for a period not exceeding one year, the councillor's entitlement to attend all meetings of the council, and any committee or sub-committee of the council; and any other body on which the councillor is a representative or nominee of the council.</p> <p>(d) disqualifying the councillor, for a period not exceeding five years, from being or being nominated for election as, or from being elected as, a councillor.</p>	<p><i>Case tribunals</i></p> <p>a. to take no action in respect of the breach;</p> <p>b. to suspend or partially suspend the member from the authority concerned for up to 12 months;</p> <p>c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.</p> <p><i>Appeals tribunals:</i></p> <p>d. censure the member;</p> <p>e. to suspend or partially suspend the member from the authority concerned for up to 6 months.</p>	<p>Sanctions include:</p> <p>(i) any investigative or disciplinary procedures which may be exercised in relation to the person concerned, whether under any other provision of this or any other enactment or otherwise;</p> <p>(ii) referral of the matter to the Director of Public Prosecutions (in relation to the requirement to submit an annual declaration containing declarable interests and commitment to abide by the code of conduct); or</p> <p>(iii) any other course of action considered appropriate in the circumstances.</p>

## 2 England

The Localism Act 2011 introduced a system whereby local councils are required to maintain a code of conduct and establish mechanisms to investigate alleged breaches of the code. Research produced by the House of Commons stated that:

*Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person' to investigate alleged breaches, and sanctions to be imposed on any councillors who breach the code. Since 2011, model codes of conduct have been produced by DCLG, the Local Government Association, and the National Association of Local Councils (NALC).<sup>1</sup>*

The 2011 Act requires councils to appoint at least one 'independent person' to advise the council before it can arrive at a decision on a complaint.<sup>2</sup> Councillors, council officers and relatives and close friends of either are prohibited from acting as an independent person. Many councils maintain standards committees to make decisions on alleged breaches, taking into account the view of the independent person, although this is not a legal requirement. A councillor who is subject to an allegation may consult the independent person.

Sanctions can include an apology, censure or withdrawal of certain facilities or access to council buildings.<sup>3</sup>

However, breaches relating to pecuniary interests, such as the failure to disclose relevant interests or participating in a meeting or voting when a conflict caused by a failure to disclose relevant pecuniary interests, constitute criminal offences:

*Either offence is punishable by a fine of up to level 5 (currently an unlimited amount), and an order disqualifying the person from being a member of a relevant authority for up to five years. A prosecution must be brought within 12 months of the prosecuting authorities having the evidence to warrant prosecution, but any prosecution must be brought within 3 years of the commission of the offence and only by or on behalf of the Director of Public Prosecutions.<sup>4</sup>*

A 2019 report from the Committee on Standards in Public Life provided more context to the local government standards regime in England. It indicated that

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<sup>1</sup> House of Commons Library, *Local Government Standards in England*, September 2020:

<https://researchbriefings.files.parliament.uk/documents/SN05707/SN05707.pdf>

<sup>2</sup> As above

<sup>3</sup> Committee on Standards in Public Life, *Local Government Ethical Standards*, January 2019:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_C\\_SPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_C_SPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>4</sup> House of Commons Library, *Local Government Standards in England*, September 2020

*Within the statutory framework, principal authorities have discretion to develop their own standards procedures according to their own needs and resources. For example, some authorities give a more significant role to their Monitoring Officer and only involve a standards committee or Independent Person in the case of a formal investigation, others make extensive use of party discipline to resolve standards issues informally, and some authorities involve Independent Persons and standards committee members in a range of activities aimed at upholding ethical conduct and ethical decision-making within the authority. This means that authorities' standards arrangements, whilst they have commonalities, can in practice be implemented very differently.<sup>5</sup>*

### 3 Scotland

Under the Ethical Standards in Public Life etc. (Scotland) Act 2000, local councils in Scotland are required to have a Code of Conduct for their elected and appointed members. There is one Code of Conduct, approved by the Scottish Parliament, that applies to all 32 councils in Scotland.

The Standards Commission is the body charged with ensuring adherence to the Code of Conduct. However, the Commissioner for Ethical Standards, who is separate to the Standards Commission, is required to investigate alleged breaches of a council's Code of Conduct. The Commissioner then reports to the Standards Commission which will decide what, if any, action is appropriate. The Standards Commission can also direct the Ethical Standards Commissioner to carry out further investigations.

The Standards Commission will hold a Hearing to determine:

- whether a councillor or member of a devolved public body has contravened the Councillors' or the Members' Code of Conduct; and
- the sanction to be applied where, following a Hearing, the Panel find that a councillor or member has breached the relevant Code of Conduct.<sup>6</sup>

Part 2 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 sets out the provisions for dealing with alleged breaches of the Code, including the sanctions that can be applied if the Standards Commission for Scotland finds that there has been a breach of the Code. If a Hearing by the Standards Commission finds that a councillor has breached the Code of Conduct, one of the following sanctions will be imposed:

*(a) censuring the councillor.*

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<sup>5</sup> Committee on Standards in Public Life, *Local Government Ethical Standards*, January 2019

<sup>6</sup> Standards Commission for Scotland: <https://www.standardscommissionscotland.org.uk/about-us>

*(b) suspending, for a period not exceeding one year, the councillor's entitlement to attend one or more but not all of the following:*

*i) all meetings of the Council;*

*ii) all meetings of one or more committees or sub-committees of the council;*

*iii) all meetings of any other body on which that councillor is a representative or nominee of the council.*

*(c) suspending, for a period not exceeding one year, the councillor's entitlement to attend all meetings of the council, and any committee or sub-committee of the council; and any other body on which the councillor is a representative or nominee of the council.*

*(d) disqualifying the councillor, for a period not exceeding five years, from being or being nominated for election as, or from being elected as, a councillor.*

*A period of suspension under (b) or (c) above which would continue until or beyond an ordinary election will come to an end at the beginning of the day on which that election is held.*

*Disqualification of a councillor has the effect of vacating that councillor's office and extends to the councillor's membership of any committee or sub-committee of the council, any joint committee, joint board or other body on which the councillor is a representative or nominee of the Council.<sup>7</sup>*

## 4 Wales

The Public Services Ombudsman for Wales (PSOW) has responsibility for investigating complaints against councillors for alleged breaches of the Code of Conduct.

The Local Government Act 2000 created a new ethical framework for local government in Wales. The website of the PSOW explains:

*[The Act] created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued*

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<sup>7</sup> Standards Commission for Scotland, *Guidance on the Councillors' Code of Conduct*:

<https://www.standardscommissionscotland.org.uk/uploads/files/1545151725181218CCfCouncillorsGuidanceDec2018.pdf>

*a number of revisions to the current Model Code of Conduct (issued in 2008) which all relevant authorities were required to adopt.<sup>8</sup>*

The PSOW has recognised the effectiveness of local resolution measures to deal with low-level complaints which are made by a member against a fellow member. He has stated:

*Local resolution can also play an important role within community and town councils where, all too, often low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public.<sup>9</sup>*

However, where a breach of the Code of Conduct is reported to the Ombudsman, he will decide whether or not to investigate. If, after an investigation, the Ombudsman finds that there has been a breach, then he may report his findings to the Local Standards Committee (within the council), or to the President of the Adjudication Panel for Wales. The Ombudsman uses a two-stage test to determine whether to investigate:

Stage 1. whether there is direct evidence that a breach actually took place

Stage 2. consider whether an investigation or a referral to a standards committees or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour on the part of the member
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member...and whether the

<sup>8</sup> Public Services ombudsman for Wales, *The Code of Conduct for members of local authorities in Wales*: <https://www.ombudsman.wales/wp-content/uploads/2021/02/Code-of-Conduct-PSOW-Community-Councils.pdf>

<sup>9</sup> As above



use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.<sup>10</sup>

The Adjudication Panel has two sanctions regimes in place:

<p><b>Case tribunals</b> are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction (if any).</p> <p><b>Sanctions</b></p> <ul style="list-style-type: none"> <li>a. to take no action in respect of the breach;</li> <li>b. to suspend or partially suspend the member from the authority concerned for up to 12 months;</li> <li>c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years</li> </ul>	<p><b>Appeals tribunals</b> are appointed by the President to consider appeals from members against a decision of a local Standards Committee. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may uphold and endorse any sanction imposed or refer the matter back to the Standards Committee with a recommendation as to a different sanction or overturn the determination of the Committee that there has been a breach of the Code. An appeal tribunal cannot recommend a sanction which was not available to the Standards Committee.</p> <p><b>Sanctions</b></p> <ul style="list-style-type: none"> <li>d. censure;</li> <li>e. to suspend or partially suspend the member from the authority concerned for up to 6 months.</li> </ul>
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Guidance produced by the Adjudication Panel states:

*The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.<sup>11</sup>*

## 5 Republic of Ireland

The Local Government Act 2001 sets out an “ethical framework that imposed a statutory duty on all in the local government service to maintain proper standards of integrity, conduct and concern for the public interest.”<sup>12</sup>

<sup>10</sup> Public Services ombudsman for Wales, *The Code of Conduct for members of local authorities in Wales*

<sup>11</sup> Sanctions Guidance Issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000: <https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2020-07/APW04.pdf>

<sup>12</sup> Local Government Act 2001 Ethical Framework for the Local Government Service, Code of Conduct for Councillors, Department of Housing, Planning and Local Government



The Standards in Public Office Commission explains the ethical framework within which local councillors must operate:

*The Local Government Act 2001 sets out an ethical framework and imposes a statutory duty on local authority members (city and county councillors) to maintain proper standards of integrity, conduct and concern for the public interest. This is to be achieved by adhering to the Code of Conduct for Local Authority Members, the completion of annual declarations of interest and the completion of annual political donation statements.*<sup>13</sup>

Guidance issued by the Department of Housing, Planning and Local Government explains the process to be followed for the investigation of complaints:

*Where the Council's Ethics Registrar becomes aware of a possible contravention by a councillor of a provision of Part 15 of the Local Government Act 2001, it is his or her duty to bring it to the attention of the Chief Executive and the Cathaoirleach of the Council (or the Chief Executive if the matter concerns the Cathaoirleach). It is a matter for the Chief Executive and the Cathaoirleach (or the Chief Executive, as appropriate) to consider what action should be taken in accordance with the legislation. This may include investigation, referral to the Director of Public Prosecutions or the making of a complaint by the Cathaoirleach/Chief Executive to the Standards Commission.*<sup>14</sup>

If a person is found to be in breach of Part 15 of the 2001 Act, actions may include:

- (i) any investigative or disciplinary procedures which may be exercised in relation to the person concerned, whether under any other provision of this or any other enactment or otherwise;
- (ii) referral of the matter to the Director of Public Prosecutions (in relation to the requirement to submit an annual declaration containing declarable interests and commitment to abide by the code of conduct); or
- (iii) any other course of action considered appropriate in the circumstances.<sup>15</sup>

The Standards in Public Office Commission supervises, among other legislation, the Local Government Act 2001. Complaints can be made to the Commission about contraventions of Section 15 the 2001 Act (a person is guilty of an offence if he or she knowingly acts as a member of a local authority when disqualified, or knowingly votes when prohibited by or under any enactment), but will not generally consider a complaint until all local avenues have been explored.<sup>16</sup>

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<sup>13</sup> Standards in Public Office Commission: <https://www.sipo.ie/resources/councillor/>

<sup>14</sup> Dept. Housing Code of Conduct

<sup>15</sup> Local Government Act 2001: <http://www.irishstatutebook.ie/eli/2001/act/37/section/174/enacted/en/html#sec174>

<sup>16</sup> As above