



Coimisiún um Chaighdeán in Oifigí Poiblí **Standards in Public Office Commission**

Complaint to the Standards in Public Office Commission under the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001 and Part 15 of the Local Government Act 2001

Mr Kenneth O'Flynn TD (former Councillor)

29 July 2025

Decision of the Commission on a preliminary application

1. Introduction

1.1. The Standards in Public Office Commission (“the Commission”) was established in accordance with section 21 of the Ethics in Public Office Act 1995 (“the Ethics Act”), as amended by section 2 of the Standards in Public Office Act 2001 (“the Standards Act”), which was brought into operation by the Standards in Public Office Act 2001 (Commencement) Order 2001. The members of the Commission are:

- Mr Justice Garrett Sheehan (Chairperson)
- Mr Ger Deering
- Ms Geraldine Feeney
- Mr Peter Finnegan
- Mr Martin Groves
- Mr Seamus McCarthy

1.2. Complaints may be made to the Commission about the actions of public officials under the Ethics Act and the Standards Act, which together create a single framework for the consideration and investigation of complaints by the Commission and are collectively known as the ‘Ethics Acts’.

1.3. Under the Ethics Acts, the Commission is charged with carrying out investigations into whether public officials are acting consistently with their public functions and with the maintenance of public confidence in the performance of those functions. The Commission may make preliminary inquiries to assist in its decision as to whether to carry out a formal investigation, and may request the assistance of a statutory inquiry officer to do so.

1.4. In respect of local authority members and employees, the Local Government Act 2001 applies the Ethics Acts (with some modification). Section 180(2) of the Local Government Act 2001 (‘LGA’) applies the Ethics Acts to local authorities, including the Commission’s investigation powers. Section 168 of the LGA provides as follows:

“In carrying out their functions under this or any other enactment, it is the duty of every member and every employee of a local authority and of every member of every committee to maintain proper standards of integrity, conduct and concern for the public interest.”

1.5. Section 169(1) of the LGA provides that the Minister with responsibility for local government may, after consultation with the Commission and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, “issue codes of

conduct for the guidance of members of local authorities and of employees of local authorities”. Section 169(3)(a) then requires that “[e]ach member shall have regard to and be guided by the relevant code of conduct in the exercise of his or her functions.” This decision references the Code of Conduct for Councillors 2004 as well as the updated Code of Conduct for Councillors 2019.

- 1.6. On 14 April 2022, the Commission received a complaint from the Traveller Equality and Justice Project (Complainant 1) in respect of Cllr. Kenneth O’Flynn of Cork City Council¹ (the ‘Respondent’). On 6 May 2022, the Commission received a second complaint against the Respondent from the Traveller Visibility Group and the Cork Traveller Women’s Network (Complainant 2). Complainant 1 alleged a “consistent preconceived negative attitude towards” Travellers on the part of the Respondent and Complainant 2 alleged that the Respondent was ‘stereotyping...[and] targeting...the Traveller community in Cork’. The Complainants have identified a number of acts, including comments made in radio interviews and the Respondent’s use of social media, in support of their complaints.
- 1.7. The complaints were considered by the Commission at its meeting of 22 September 2022. The Commission decided to appoint an inquiry officer to carry out a preliminary inquiry in relation to the complaints, and this was done pursuant to section 4(4) and section 6 of the Standards in Public Office Act 2001. Following the preliminary inquiry, the Commission gave careful consideration to all of the allegations made in the complaints and to the potential contraventions.
- 1.8. In respect of four of the allegations included in the complaints, the Commission decided that there was sufficient evidence to establish a *prima facie* case that the Respondent may have acted in a manner which is inconsistent with, or may have failed to act in a manner which is consistent with, the proper performance of the functions of his position and/or with the maintenance of public confidence in such performance. The Commission considered that the matter was one of significant public importance. Accordingly, the Commission decided that it would carry out an investigation under section 23 of the Ethics in Public Office Act 1995.
- 1.9. A Statement of Alleged Contraventions was prepared and was approved by the Commission at its meeting on 4 December 2024. The Statement of Alleged Contraventions is in **Appendix A** to this decision.
- 1.10. Within the Statement of Alleged Contraventions, it is alleged that comments made by the Respondent during a radio interview with Red FM on 16 June 2021 in respect of the Spring Lane/Ellis’s Yard site in Ballyvolane, Co. Cork, are inaccurate, misleading and/or indicative of a biased view of members of the Traveller Community. In particular, the Respondent is alleged to have stated that a report published by the Ombudsman for Children, May 2021 titled “No End in Site”, which considered the conditions in the Spring Lane site was 3-4 pages in length, did not mention the parents

¹ The Respondent was elected as a TD for the Cork North Central Constituency as a result of the 2024 General Election.

of children concerned and did not involve TUSLA. Additionally, the Respondent is alleged to have stated “What are they now? An ethnic minority?” in reference to the Traveller Community.

- 1.11. As regards his social media Facebook account, the Respondent is alleged to have published and/or authorised the publication of statements demonstrating a biased view of members of the Traveller Community, is alleged to have failed to monitor and/or remove comments exhibiting bias towards the Traveller Community and other minority groups including those of an inflammatory and derogatory nature made in reply to his statements and is alleged to have expressly endorsed some such comments by using the “like” feature available on Facebook.
- 1.12. The Respondent was first notified of the investigation on 3 May 2024 by registered letter to his previously contacted address and by email to his official Council email address, including a direction to attend a hearing on 7 October 2024. No acknowledgement was received. Further letters were sent to the Respondent and several attempts were made to contact him. The secretariat managed to reach the Respondent by phone on 8 July 2024, but no further calls or emails were answered. On 7 August 2024, an official from Cork City Council confirmed that he had handed the letter and materials personally to the Respondent. Later that day, the Respondent personally confirmed receipt.
- 1.13. On 25 September 2024, the Respondent requested that his investigation hearing be adjourned to enable him to obtain legal representation. The Commission agreed and the hearing was re-scheduled to be held on 2 December 2024. On 13 November 2024, the Commission notified the Respondent of its decision to adjourn the hearing on 2 December 2024 in light of the general election on 29 November 2024, in which he was a declared candidate.
- 1.14. On 18 March 2025, the Commission wrote to the Respondent to notify him that an investigation hearing would be held on 19 May 2025. The Commission noted that any preliminary matters or applications should be notified to the Commission by 4 April 2025.
- 1.15. On 4 April 2025, submissions were received from the Respondent, raising a number of preliminary issues and submitting that the Respondent had no case to answer on the face of the allegations.

The Respondent’s failure to engage

- 1.16. The Commission notes that the Respondent failed to substantively respond to the inquiry officer as part of the preliminary inquiry or to engage with the Commission’s initial correspondence in respect of this matter. This was most unhelpful by the Respondent and contributed to significant delay in the Commission’s process. As an elected member of a County Council or of Dáil Éireann, it behoves the Respondent to

proactively engage at the earliest possible opportunity with the Commission and with any preliminary inquiry officer appointed on its behalf.

- 1.17. When contacted by the preliminary inquiry officer on 28 March 2023, the Respondent failed to acknowledge the correspondence. The preliminary inquiry officer followed up with correspondence on 17, 24 and 26 April 2023 but received no response. When the preliminary inquiry officer called the Respondent by phone on 5 May 2023, the Respondent confirmed that he had received the correspondence but stated that he did not intend to make a statement. The Respondent was initially unresponsive to the Commission's correspondence notifying him of its intention to hold an investigation, only responding to the Commission when an employee of the Council hand-delivered the Commission's correspondence to him, but even then no comment was made by the Respondent in respect of the substance of the allegations against him. It was only on 4 April 2025, in anticipation of a proposed investigation hearing on 19 May 2025 that the Respondent made any submission to the Commission at all, this time through his legal representative. The first time that the Commission was informed of the Respondent's personal response to the allegations was at the hearing of the preliminary application on 19 May 2025.
- 1.18. Had the Respondent engaged with the preliminary inquiry officer when first contacted in March 2023, and made the points that were eventually made on his behalf on 19 May 2025, the Commission might have benefitted from that additional information at the time and may have reached a conclusion in respect of the complaints against the Respondent at a much earlier stage. Due to the Respondent's failure to engage at an appropriately early stage, the Commission incurred significant and avoidable costs.

2. Legal framework

Legal framework for the Commission's decisions

- 2.1. The Commission is an independent statutory body, the composition of which is designed to ensure that any value judgements or evidential assessments are made with the benefit of the diverse knowledge and experience of its members.
- 2.2. The Commission may only carry out investigations under the Ethics Acts in respect of those who meet the definition of a 'specified person'. This includes public officials, such as the Respondent.
- 2.3. When the Commission receives a complaint about the conduct of a public official who is a specified person, there are statutory grounds on which the Commission must decline to investigate complaints, or may decline to investigate complaints.

- 2.4. The Commission must not investigate a complaint about a specified act by a specified person if any of the following apply:
- the matter is not, in the opinion of the Commission, of sufficient gravity to warrant an investigation by the Commission;
 - the Commission considers the complaint to be frivolous or vexatious;
 - the Commission becomes of the opinion that the alleged act is not a 'specified act';
 - the Commission becomes of the opinion that there is insufficient evidence to establish a *prima facie* case in relation to the alleged specified act; or
 - in relation to certain categories of specified person, unless the Commission is satisfied, following consultation with a Minister, that: (a) it is appropriate to carry out an investigation, and (b) an adequate investigation cannot or will not be carried out by the Minister or another body.
- 2.5. The Commission may also decline to investigate a complaint about a specified act if the Commission becomes of the opinion that evidence sufficient to sustain the complaint is not and will not be available.
- 2.6. Such matters are considered before a decision is made to proceed (or not to proceed) to a formal investigation, to ensure that the Commission's investigations are focused on matters that have the greatest potential impact on public life, and where there is a reasonable prospect that an adverse finding might be supported following an investigation.

Legislative protections in place for the Traveller community

- 2.7. Irish Travellers are an indigenous, ethnic minority with a unique and long-established shared history and traditions across the island of Ireland. In March 2017, formal recognition of Travellers as a distinct ethnic group was granted by the State. Travellers are a distinct indigenous ethnic group owing to their culture, shared heritage, history, and values, including language and traditional nomadic way of life.
- 2.8. Travellers as an ethnic group are protected by Irish legislation, which imposes general prohibitions on direct and indirect discriminatory behaviour, harassment and victimisation which is based upon or linked to membership of the Traveller community.

3. The Respondent's preliminary submissions

- 3.1. As set out above, on 4 April 2025, submissions were received from the Respondent, raising a number of preliminary issues and submitting that the Respondent had no case to answer on the face of the allegations.
- 3.2. The principal preliminary issues raised by the Respondent are, in summary:
- In relation to the facts alleged at I.ii of the Statement of Alleged Contraventions, that there is a discrepancy between the transcript (as reflected in the first contravention) and the audio recording of the radio interview on Red FM, such that the statement at issue cannot be interpreted as pejorative.
 - In relation to all facts alleged, that the Respondent was not carrying out his functions as a member of the local authority when the acts in question were done (i.e. that the acts relate to a private matter and are unrelated to his functions, such that they are not specified acts).
 - In relation to all facts alleged, that the Respondent's comments in the Red FM interview and in his social media posts constitute legitimate commentary and are therefore not capable of amounting to a specified act or a contravention of the local government legislation, by virtue of the constitutional right to freedom of expression.
 - In relation to the facts alleged at II of the Statement of Alleged Contraventions, that the allegations involve 'cherry picking' of the Respondent's social media posts, such that the selected posts are not a fair reflection of his attitude to members of the Traveller community.
 - In relation to the facts alleged at II of the Statement of Alleged Contraventions, that certain of the social media posts the subjects of the allegations pre-date the updating of the Code of Conduct for Councillors in 2019. The original 2004 Code did not specifically address social media activity and it was only when the Code was updated in July 2019 that there was inclusion of provisions specifically addressing social media.
- 3.3. The Commissioners considered the application in writing and, pursuant to paragraph 48(f) of its procedures in respect of its complaints process, the Commission decided to hold a preliminary hearing.
- 3.4. The preliminary hearing took place on 19 May 2025 and considered all of the preliminary issues raised by the Respondent with the exception of the 'cherry picking' submission, as same was deemed not appropriate to consider at a preliminary hearing in the absence of oral evidence.

- 3.5. The Commission has carefully considered all of the materials provided as part of the initial complaints, the Inquiry Report and the Respondent's preliminary submissions. The Commission has reached the following conclusions.

4. Alleged discrepancy between transcript and audio

- 4.1. In his legal submissions in respect of the preliminary hearing, the Respondent stated that:

"It is clear if you listen to the radio interview that Mr. O'Flynn stated "Cork City Council is doing its level best to accommodate people, to accommodate, what have now been declared an ethnic minority." Not as set out in the allegations against Mr. O'Flynn which states as follows. "What are they now? An ethnic minority"."

- 4.2. The Commission listened to the radio interview in its entirety as well as spending significant time considering this one specific excerpt of the conversation between the Respondent and the presenter on Red FM. The Commission also considered the transcript of the interview which had been professionally transcribed and which recorded the relevant excerpt as reading:

"Cork City Council is doing its level best to accommodate people, to accommodate what has been lauded as an ethnic minority."

- 4.3. Having carefully listened to this exchange on multiple occasions, the Commission finds that the audio is not sufficiently clear in relation to the excerpt to make a finding, on a preliminary basis, as to whether the wording of the allegation in the Statement of Alleged Contraventions is correct.

5. Whether the Respondent was carrying out the functions of office

- 5.1. The Respondent states in his legal submissions that there is a "glaring absence" of "evidence that Mr. O'Flynn made the comments and posts in the performance of his functions as a member of the Cork City Council". Reliance in this regard is placed by the Respondent upon the decision of the English High Court in *Livingstone v.*

*Adjudication Panel for England*², in which the court found that the adjudication panel had *"failed to recognise the real distinction between the man and the office"*.

- 5.2. Section 4(2)(a) of the SIPO Act 2001 excludes from the scope of *"specified act"* any act which *"relates to a private matter and is unrelated to the functions of the office or position by reference to which the specified person is such a person"*.
- 5.3. In addition, section 169(3)(a) of the LGA requires that a member of a local authority *"shall have regard to and be guided by the relevant code of conduct in the exercise of his or her functions"*. The phrase *"exercise of his or her functions"* is not defined, but section 2(1) of the LGA provides that the term *"function"* includes *"powers and duties"*. The Commission regards this as a clear indication that the *"functions"* of a Councillor (as the Respondent then was) go beyond his or her *"powers and duties"* and considers that they extend to his or her communications and dealings with members of the public in his or her representative capacity. This is supported by the Code of Conduct for Councillors 2019, which, pursuant to s. 169(1) of the LGA, is issued *"for the guidance of members of local authorities"*, *"shall deal with the conduct and standards of integrity of members... in performing their functions"* and *"shall also deal with matters which... will help to uphold public confidence in the integrity of the discharge of local authority functions"*. The scope of the Code goes beyond the exercise of a councillor's powers and duties, covering the overall *"standards of behaviour"* that can be expected of councillors by the public and requiring councillors, in their general conduct, to fulfil their *"duty to keep faith with the public trust placed in them"*.
- 5.4. Bearing the foregoing in mind, the Commission was not persuaded by the Respondent's submission that his comments on Red FM and his Facebook page were private matters, *"unrelated to the functions of the Respondent's position"* as a member of Cork City Council.
- 5.5. It is clear to the Commission, having considered the entirety of the Red FM interview, that the Respondent had been invited onto this public radio show to discuss issues relevant to Council business in his capacity as a sitting City councillor. In this regard, the Commission notes that:
- The Respondent was introduced on the show as "Independent Councillor Ken O'Flynn" and referred to during parts of the show as "Councillor Ken O'Flynn";
 - The Respondent discusses calls he has received from Cork City Council constituents;
 - The Respondent address the national housing shortage from the perspective of his experience as a Cork City councillor;
 - The Respondent discusses the housing list/housing stock for Cork City Council;

² [2006] EWHC 2533 (Admin), [2006] L.G.R. 799

- The Respondent is asked about questions he put to Cork City Council in respect of the Spring Lane halting site;
 - The Respondent speaks on behalf of Cork City Council on numerous occasions during the interview e.g. “we do not in Cork City Council own the type of properties that people are expecting...”, “we drew down €250,000 from central government” “we had secured a contract for the site”; and
 - The Respondent references the investment Cork City Council made in mobile homes over a three-year period.
- 5.6. The Commission also notes that the facts of *Livingstone* are so factually different and specific to the set of circumstances detailed in that judgment, that they are of little persuasive value to the Commission. *Livingstone* concerns the then Lord Mayor of London being secretly recorded making offensive comments to a journalist when ‘off-duty’. The Court held that this amounted to “*personal misconduct*” which was unlikely to bring the office of Mayor of London into disrepute. In *Livingstone* the Court noted that the conduct of Mr. Livingstone was “*remote from his official position*” and this contrasts with the position of the Respondent in this instance, who had been invited onto a Red FM broadcast in his capacity as a sitting Councillor.
- 5.7. The Commission also notes that the Respondent’s Facebook account is regularly used to debate issues of direct relevance to the Council and the Respondent’s own constituents. The fact that the Respondent’s legal representative indicated, during the course of the preliminary hearing, that the account was operated on his behalf at times by members of his support staff only strengthens the Commission’s view that the operation of the page is intrinsically linked to the Respondent’s role as an elected official.
- 5.8. Accordingly, the Commission rejects this aspect of the Respondent’s submissions.

6. Whether the Respondent’s comments and posts are a legitimate exercise of the right to freedom of expression

- 6.1. The Respondent requests the Commission not to proceed to investigation on the ground that the allegations at their height are permitted expression under the Constitution of Ireland and the European Court of Human Rights (ECHR).
- 6.2. The Commission received submissions on the applicable law on freedom of expression, through the Respondent’s written submissions and the hearing guidance

document prepared by counsel for the Commission. The Commission also heard oral submissions on the matter at the preliminary hearing.

- 6.3. Article 40.6 of the Constitution guarantees, “*subject to public order and morality*”, the “*right of the citizens to express freely their convictions and opinions*”. That provision specifically acknowledges the balance to be struck between the education of public opinion and the maintenance of public order or morality, as follows:

“The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.”

- 6.4. Article 10 of the European Convention on Human Rights (the “Convention”) states, in relevant part:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

- 6.5. The Commission notes that the constitutional right is “*subject to public order and morality*”, while the Convention right may be subject to restrictions prescribed by law and necessary in a democratic society, in the interests of (*inter alia*) the protection of the reputation or rights of others. Accordingly, the right to freedom of expression is not untrammelled, and the Respondent’s legal representatives accepted as much at the preliminary hearing.
- 6.6. The Commission is also cognisant of the need to consider whether an interference with the rights of individuals under the Constitution or the Convention is proportionate, taking into account the cases referenced by the Respondent and counsel for the Commission.³ The Commission had particular regard to analogous cases in England and Wales, which were brought to its attention by the Respondent. In *Sanders v*

³ *Ryan v. Attorney General* [1996] I.R. 294, per Kenny J; *Heaney v Ireland* [1994] 3 I.R. 593, at p. 607; *Meadows v Minister for Justice* [2010] IESC 3, [2010] 2 I.R. 701, at paras. 57 and 58; *R (on the application of Dennehy) v Ealing London Borough Council* [2014] LGR 269; *Sanders v Kingston* [2005] LGR 719

Kingston [2005] EWHC 1145 (Admin), the High Court in England and Wales observed that the application of a local authority's code of conduct to political debate which might be regarded as offensive cannot be unmediated by consideration of the right to freedom of expression, though in that case the interference was justified on the facts. The Commission also notes the comments of the England and Wales High Court in *R (Calver) v Adjudication Panel for Wales QBD* [2012] EWHC 1172 (Admin), where the Court noted that "*freedom of expression includes the right to say things which 'right thinking people' consider dangerous or irresponsible or which shock or disturb*". In that case, it was particularly relevant that the comments of the councillor in question were directed at other councillors.

- 6.7. The Commission notes that the Oireachtas has, under the Ethics Acts and the Local Government Act, given it responsibility for determining compliance with the ethical provisions in those Acts. A large cohort of the 'specified persons' who fall within the Commission's remit are politicians and the Commission is charged with considering the consistency of their acts and omissions with the performance of their official functions, and not their private behaviours unrelated to their official functions. As a result, it is necessarily the case that the performance of the Commission's role may involve some interference with the right of freedom of expression.
- 6.8. Taking all of the above into account, the Commission is satisfied that the existence of the right to freedom of expression does not prevent it from investigating whether statements made by public officials amount to a specified act and/or contravene the provisions of the LGA, simply by virtue of the right to free speech being engaged. The Respondent, through his legal representatives, accepted that there is a higher threshold for elected politicians, entrenched in section 168 of the LGA, which places a higher onus on local authority members. However, where the right to freedom of expression is engaged, the Commission must consider the extent to which any interference with freedom of expression would be proportionate, having regard to the protection of that right by the Constitution and the Convention. Consistent with the Convention cases drawn to its attention, the Commission must have particular regard to the protection afforded to political speech.
- 6.9. The Commission is strongly of the view that the rights of the Traveller community are of significant public importance. The Commission emphasises the importance of ensuring that elected representatives do not directly or indirectly engage in Traveller discrimination, victimisation or harassment. To the extent possible within its remit, the Commission is committed to ensuring that elected representatives do not use language that inflames/incites any such discriminatory practice.
- 6.10. However, while the Commission recognises that there is a responsibility on public officials to engage in public discourse in a responsible manner, particularly when commenting in relation to protected groups such as the Traveller Community, there is a broad margin of appreciation that must be afforded to politicians to discuss issues of local or national concern. The Respondent's Red FM interview must be viewed through this prism.

- 6.11. The Commission listened to the lengthy radio interview in its entirety. The Commission notes that the comments complained of were a small proportion of the entire interview. The bulk of the interview can properly be described as political engagement on issues of concern to the Respondent's constituency. Whether the Commission agrees with the political views of the Respondent is irrelevant. The Commission notes the finding by the Broadcasting Authority that there was a lack of balance present in the interview and that the programme ought to have presented an alternative view to challenge that of the Respondent. Had this been done, it is likely that the interview would have been more reflective of a balanced political discourse and this would have mitigated any inaccuracies in the Respondent's comments.
- 6.12. The statement of alleged contraventions in this case references two specific excerpts of the Red FM interview, relating to the ethnic minority status of the Traveller community and a report by the Ombudsman for Children into a site at Spring Lane. As set out above, the Commission is not satisfied that the comments regarding the ethnic minority status of the Traveller community are sufficiently clear to enable it to make a finding as to the correctness of the alleged statement. The Commission considers that the Respondent's comments in relation to the Ombudsman for Children report must be viewed through the prism of freedom of expression, as outlined above.
- 6.13. On that basis, the Commission is not satisfied that the evidence before it, in relation to the Respondent's comments on the Ombudsman for Children report, is sufficient to sustain a finding by the Commission that the Respondent has contravened sections 168 or 169 of the LGA or has acted in a manner which is inconsistent with the performance of his functions or with the maintenance of confidence in such performance by the general public. As the sole evidence for consideration in relation to this aspect of the complaint is the interview itself, there is no additional evidence which could assist the Commission in this regard. Accordingly, the Commission is of the view that no investigation should be carried out by the Commission in respect of the Respondent's engagement during the Red FM interview.
- 6.14. In relation to the Respondent's Facebook posts, however, the Commission is not persuaded that free speech considerations would impact on the Commission's ability to make a finding in respect of the Respondent's actions. While accepting that the right to freedom of expression also extends to the use of social media, having examined the Facebook posts in detail, the Commission is not satisfied that their content is in the nature of the education of public opinion, or in the nature of political discourse, such that they would attract a high level of protection. Were the Commission to carry out an investigation into the Respondent in respect of the posts, in the course of its deliberations the Commission would have to carefully consider the proportionality of any interference with the right to freedom of expression. However, the Commission is of the view that such analysis would appropriately be carried out in the context of an investigation. Accordingly, the Commission will go on to consider the Respondent's submissions regarding the timing of the posts, as well as the appropriateness of proceeding in respect of the Facebook posts in isolation.

7. Facebook posts pre-dating the update of the Code of Conduct

7.1. The original Code of Conduct was issued in June 2004. It was updated in July 2019. The Respondent submits that certain of the social media posts the subjects of the allegations pre-date the updating of the Code of Conduct. The original 2004 Code did not specifically address social media activity and it was only when the Code was updated in July 2019 that there was inclusion of provisions specifically addressing social media.

7.2. The following evidence of activity of the Respondent on Facebook is relevant:

- a video recording scrolling through comments on a post made by him on 15 April 2019, including some comments “liked” by him;
- screenshots of a post dated 15 April 2019 and associated comments;
- screenshots of a post dated 8 May 2019 and associated comments;
- screenshots of a post dated 15 May 2019 and associated comments;
- screenshots of a post dated 7 April 2020 and associated comments;
- screenshots of a post dated 26 February 2021 and associated comments;
- a video recording scrolling through comments on a post made by him on 18 April 2021;
- screenshots of a post dated 18 April 2021 and associated comments.

7.3. The first four items above were posted prior to the updating of the Code in July 2019. However, those posts were not removed prior to July 2019 and continued to appear after that date. The Commission is satisfied therefore that the posts from April and May 2019 could amount to a breach of section 9.4 of the 2019 Code. Even though that provision was not in place at the time, omission to remove the posts after July 2019 would be capable, in principle, of amounting to a breach of that provision of the updated Code.

7.4. In addition, the Commission is satisfied that the first four items above would in any event be capable of amounting to a breach of the provisions of the 2004 Code. The relevant provisions of each Code are included in Appendix B to this decision, in tabular form with the relevant provisions compared. In respect of social media, the Statement of Alleged Contraventions relies on sections 2.1, 2.2, 2.3, 4.11 and 9.4 and of the Code.

- 7.5. Paragraph 2.1 of both the 2004 Code and the 2019 Code refer to the duty on councillors *“to keep faith with the public trust placed in them”* and *“to observe the highest ethical standards”*. Paragraph 2.2 of both the 2004 Code and the 2019 Code requires councillors to act in a way that *“enhances public trust and confidence”*, to *“promote equality and avoid bias”*, and to serve the local authority and its people / citizens conscientiously, honestly and impartially. Paragraph 2.3 of both the 2004 Code and the 2019 Code require that councillors should *“seek to ensure that their conduct does not bring the integrity of their office or of local government into disrepute.”* Paragraph 3.10 of the 2004 Code and paragraph 4.11 of the 2019 Code require councillors to *“maintain proper standards of integrity, conduct and concern for the public interest”*. The Commission is satisfied that there is no material difference between these provisions of each version of the Code in this regard.
- 7.6. The 2019 Code contains some additional provisions specifically addressing social media. Paragraph 2.2 states that *“Courtesy and respect should also be observed when using social media channels, messaging applications and written communications.”* In addition, the 2019 Code includes a specific section in respect of the use of social media. Section 9.4 sets out *“a list of examples of unacceptable use/misuse”* of social media, including
- “Content that promotes, fosters, or perpetuates discrimination on the basis of gender, civil status, family status, sexual orientation, disability, age, race, religious belief or membership of the Traveller community.”*
- 7.7. Having said that, the 2004 Code acknowledges at paragraph 10.3 that a code cannot deal with all situations and eventualities which may arise and states that:
- “If other situations of potential conflict arise between personal and public interest or if instances of perceived questionable conduct arise, councillors should aim to deal with them in accordance with the principles and intent of the Code.”*
- 7.8. The Commission is satisfied, in light of section 10.3 of the 2004 Code, that the Code does not set out an exhaustive list of the situations in which its provisions must be complied with. Section 10.3, when read in conjunction with the general requirement in section 2.2 to *“promote equality”*, convinces the Commission that it is appropriate that the posts from April and May 2019 would form part of the evidence before an investigation hearing.
- 7.9. Accordingly, the Commission does not consider that this aspect of the Respondent’s submissions materially alters the nature of the case against the Respondent, and should be rejected.

8. Whether the Commission should proceed to investigation

- 8.1. As set out above, the Commission has concluded that it should not proceed to investigation in respect of the alleged facts and contraventions at I of the Statement of Alleged Contraventions, in relation to the Red FM interview in June 2021. In light of that conclusion, the Commission considers it appropriate to examine afresh whether it ought to proceed to investigation in respect of the alleged facts and contraventions at II of the Statement of Alleged Contraventions.
- 8.2. At the preliminary hearing, the Respondent, through his legal representative, expressed regret for any offence or hurt that may have been caused by his actions. His position was that he did not intend to offend for the sake of offence.
- 8.3. The Respondent was asked by the Commission whether the social media comments, including the 'likes' remain online. The Respondent indicated that, while there had not been any active removal of any post, he did 'unlike' a number of the 'liked' messages complained of when the complaints about him were made, having reflected on the difficulties with them. Subsequent to the hearing, by way of letter dated 23 May 2025, the Respondent's legal representatives clarified that such a statement was in error and none of the Facebook posts, the subject of the investigation, had been un-liked/taken down. The Commission is disappointed about this inconsistency. Public officials should be in a position to provide the Commission with accurate information regarding the matters before it. Nonetheless, the Commission notes that the Respondent's letter undertook to 'unlike' or remove the relevant posts at the direction of the Commission if necessary.
- 8.4. At the preliminary hearing, the Respondent also noted that his social media is not exclusively managed by him personally, with at least three others having access to his account at the relevant time. He accepted, however, that he retains responsibility for his social media account. While the Commission recognises that there is a practical difficulty in monitoring and managing posts from third parties on social media when a person has a significant number of interactions, the Respondent cannot be absolved from responsibility on this basis. If other persons are used to manage his social media accounts, he retains responsibility to supervise such management. In the letter from his legal representatives subsequent to the hearing, the Respondent stated that he has now a 'standard operating procedure' and a 'complaints escalation protocol' regarding his social media accounts, copies of which he provided to the Commission. Such processes should enable the Respondent to respond more quickly in respect of alleged offending posts/comments on his social media platforms.
- 8.5. Taking all of the above into account, the Commission has carefully considered whether to proceed to an investigation. An investigation may only be justified where the matter complained of is of significant public importance.

- 8.6. The Commission, in good faith, has considered the Respondent's undertaking to remove the relevant posts and 'likes' and it makes its decision on the understanding that he will do so, and that the procedures described above have been and will continue to be implemented. The Commission also notes the Respondents (belated) expression of remorse with regard to the hurt that may have been caused by his conduct on social media. In those circumstances, the Commission is not satisfied that the Respondent's Facebook posts continue to be a matter of significant public importance such as to justify an investigation by the Commission into this matter alone.
- 8.7. The Commission wishes to emphasise that its decision not to proceed to an investigation in these circumstances does not prevent a fresh complaint being made to the Commission, for example if the Respondent fails to comply with the undertaking made on his behalf or in respect of any future conduct. Any such complaint would be considered on its own merits.

9. Costs application

- 9.1. Finally, the Commission notes the indication given on the Respondent's behalf at the preliminary hearing that he would seek his costs from the Commission should the Commission's decision be made in his favour.
- 9.2. The Commission has powers to award certain kinds of costs in certain limited circumstances. Section 26 of the Ethics Act provides that, following an investigation, the Commission may order a complainant to pay costs of up to €1,875⁴ to a person (which may include a respondent). Such an award may only be made where the Commission determines after an investigation (a) that the complaint was frivolous or vexatious, or (b) that there has been no contravention or specified act and that there were no reasonable grounds for the complaint. The Commission has not carried out an investigation in this case and, in any event, its decision could not be said to fall into either of these categories.
- 9.3. The Commission also has a more general power under section 9 of the Standards Act, following an investigation, to order (a) that the costs necessarily incurred by a person appearing before it be paid to that person by any another person named in the order, or (b) that the Commission's costs be paid to the Minister for Finance by the person named in the order. In order to exercise such power, the Commission must be satisfied that there are sufficient reasons rendering it equitable to do so, having regard to the Commission's findings and all other relevant matters, including failure to co-operate with or provide assistance to or knowingly giving false or misleading information to the Commission.

⁴ The Ethics Act references a sum of £1,500, which would convert to this sum consistent with the Euro Changeover (Amounts) Act 2001.

- 9.4. Should the Respondent wish to make an application for costs, the Commission will consider such application on its merits. In addition to any considerations raised by the Respondent in the application, the Commission will take into account the Respondent's failure to engage with the preliminary inquiry or with the Commission at the early stages of this process, which resulted in unnecessary delays and costs to the Commission, as well as the Commission's specific reasons for not proceeding to an investigation.

Appendix A: Statement of Alleged Contraventions

Ethics in Public Office Act 1995

Standards in Public Office Act 2001

Local Government Act 2001

(Section 32(6)(b) of the Ethics in Public Office Act 1995)

STATEMENT OF ALLEGED CONTRAVENTIONS

Mr. Kenneth O'Flynn

Councillor, Cork City Council

Outline of Allegations

I. Alleged Facts

That, in a radio interview with Red FM on 16 June 2021, you made comments in respect of the Spring Lane/Ellis's Yard site in Ballyvolane, Cork which are alleged to be inaccurate, misleading and/or indicative of a biased view of members of the Traveller Community. In particular, you:

- i. stated that a report published by the Ombudsman for Children (OCO), May 2021 titled "No End in Site", which considered the conditions in the said site was 3-4 pages in length, did not mention the parents of children concerned and did not involve TUSLA; and
- ii. made the following comment with regard to the Traveller Community;
"What are they now? An ethnic minority?"

Alleged Contraventions

That, being a member of a local authority, you contravened the provisions of Section 168 of the Local Government Act, 2001 insofar as you made the aforementioned statements on 16 June 2021 and in so doing you:

1. Failed to maintain proper standards of integrity, conduct and concern for the public interest.
2. That being a member of a local authority you contravened the provisions of Section 169(3) of the Local Government Act 2001 in that you failed to have regard to and be guided by the Code of Conduct for Councillors insofar as you made the aforementioned statements on 16 June 2021 and in so doing you:
 - A. Did not keep faith with the public trust and did not observe the highest ethical standards in the performance of your role contrary to Section 2.1 of the Code of Conduct for Councillors.
 - B. Did not act in a way that enhances public trust and confidence contrary to Section 2.2 of the Code of Conduct for Councillors.
 - C. Did not act in a way that served your local authority and its people conscientiously, honestly and impartially contrary to Section 2.2 of the Code of Conduct for Councillors.
 - D. Did not act in a way that promotes equality and avoids bias contrary to Section 2.2 of the Code of Conduct for Councillors.
 - E. Did not seek to ensure that your conduct did not bring the integrity of your office or of local government into disrepute contrary to Section 2.3 of the Code of Conduct for Councillors.
 - F. Did not act in a manner that maintains proper standards of integrity, conduct and concern for the public interest contrary to section 4.11 of the Code of Conduct for Councillors.
3. That your alleged conduct during the radio interview with Red FM on 16 June 2021, amounted to an act and/or omission that is, or the circumstances of which are, such as to be inconsistent with the proper performance by you as a member of a local authority or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance and therefore a specified act within the meaning of section 4 of the Standards in Public Office Act 2001.

II. Alleged Facts

That on a social media account in your name with Facebook you;

- i) published and/or authorised the publication of statements demonstrating a biased view of members of the Traveller Community;
- ii) failed to monitor and/or remove comments exhibiting bias towards the Traveller Community and other minority groups, including those of an inflammatory and derogatory nature made in reply to your statements; and
- iii) expressly endorsed some such comments by using the “like” feature available on that social media platform.

Alleged Contraventions

That being a member of a local authority you contravened the provisions of Section 168 of the Local Government Act, 2001 insofar as you engaged in the above conduct and/or permitted the above conduct on your social media account:

- 1. Failed to maintain proper standards of integrity, conduct and concern for the public interest.
- 2. That being a member of a local authority you contravened the provisions of Section 169(3) of the Local Government Act, 2001 in that you failed to have regard to and be guided by the Code of Conduct for Councillors insofar as you made engaged in the above conduct and/or permitted the above mentioned conduct on your social media account and in so doing you:

- A. Did not keep faith with the public trust and did not observe the highest ethical standards in the performance of your role contrary to Section 2.1 of the Code of Conduct for Councillors.
 - B. Did not act in a way that enhances public trust and confidence contrary to Section 2.2 of the Code of Conduct for Councillors.
 - C. Did not act in a way that served your local authority and its people conscientiously, honestly and impartially contrary to Section 2.2 of the Code of Conduct for Councillors.
 - D. Did not act in a way that promotes equality and avoids bias contrary to Section 2.2 of the Code of Conduct for Councillors.
 - E. Did not use courtesy and respect when using social media channels, messaging applications and written communications contrary to Section 2.2 of the Code of Conduct for Councillors.
 - F. Did not seek to ensure that your conduct did not bring the integrity of your office or of local government into disrepute contrary to Section 2.3 of the Code of Conduct for Councillors.
 - G. Did not act in a manner that maintains proper standards of integrity, conduct and concern for the public interest contrary to section 4.11 of the Code of Conduct for Councillors.
 - H. Acted contrary to section 9.4 of the Code of Conduct for Councilors which states the following constitutes unacceptable use/misuse of social media:

“Content that promotes, fosters, or perpetuates discrimination on the basis of gender, civil status, family status, sexual orientation, disability, age, race, religious belief or membership of the Traveller Community.”
3. That your alleged conduct on your social media account and your alleged failure to monitor the conduct of others on your social media account, amounted to an act and/or omission that is, or the circumstances of which are, such as to be inconsistent with the proper performance by you as a member of a local authority or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance and therefore a specified act within the meaning of section 4 of the Standards in Public Office Act 2001.

III. Alleged Facts

The alleged actions and/or omissions outlined above at I-II

Alleged Contraventions

That you alleged actions and/or omission as outlined above, collectively amount to an act and/or omission, the circumstances of which are, such as to be inconsistent with the proper performance by you as a member of a local authority or with the maintenance of confidence in such performance by the general public, and the matter is one of significant public importance and therefore a specified act within the meaning of section 4 of the Standards in Public Office Act 2001.

Appendix B: Compared provisions of Codes of Conduct

Code of Conduct for Councillors 2004	Code of Conduct for Councillors 2019
<p>2.1 The general conduct and behaviour of councillors in carrying out their role is an important yardstick by which the honesty, integrity, impartiality and performance of local government is judged and public trust maintained. It is important therefore that these core values underpin all actions of councillors affecting local authority business. As holders of elected office they have a duty to keep faith with the public trust placed in them. This is a personal responsibility and requires them to observe the highest ethical standards in the performance of their role.</p>	<p>2.1 As holders of elected office, councillors are obliged to keep faith with the public trust placed in them. Core values such as integrity, impartiality and respect are fundamental to the public's perception of local government performance. Moreover, they require councillors to observe the highest ethical standards when delivering on their roles. These values should underpin all actions of councillors so that a high level of public trust continues to be maintained.</p>
<p>2.2 Councillors in carrying out their role should abide by this Code and:-</p> <ul style="list-style-type: none"> • act in a way which enhances public trust and confidence; • avoid conflicts of interest and never seek to use improper influence; • make decisions based solely on consideration of the public interest and the common good; • serve their local authority and its people conscientiously, honestly and impartially; • promote equality and avoid bias; • perform their functions in a responsible and diligent manner; 	<p>2.2 Councillors should abide by this Code and: -</p> <ul style="list-style-type: none"> • Act with integrity to uphold public service values; • Act in a way that enhances public trust and confidence; • Serve their local authority and its citizens honestly, conscientiously and impartially; • Prevent conflicts of interest arising and never seek to use improper influence; • Promote equality and avoid bias; • Treat their colleagues and local authority employees with courtesy, respect and dignity;

<ul style="list-style-type: none"> • treat their colleagues and local authority employees with courtesy and respect. 	<ul style="list-style-type: none"> • Courtesy and respect should also be observed when using social media channels, messaging applications and written communications.
<p>2.3 More generally, councillors should in all matters seek to ensure that their conduct does not bring the integrity of their office or of local government into disrepute.</p>	<p>2.3 More generally, councillors should in all matters seek to ensure that their conduct does not bring the integrity of their office or of local government into disrepute.</p>
<p>3.10 The Act provides that it is the duty of every councillor (and employee) to maintain proper standards of integrity, conduct and concern for the public interest. Councillors should base their conduct on a consideration of the public interest and the common good. They are individually responsible for being alert to potential conflict of interest, avoiding such conflicts and for ensuring that their actions, whether covered specifically or otherwise by this Code, are governed by the ethical and other considerations implicit in it.”</p>	<p>4.11 The 2001 Act provides that it is the duty of every councillor (and employee) to maintain proper standards of integrity, conduct and concern for the public interest. Councillors should base their conduct on a consideration of the public interest and the common good. They are individually responsible for being alert to a potential conflict of interest, avoiding such conflicts and for ensuring that their actions, whether covered specifically or otherwise by this Code, are governed by the ethical and other considerations implicit in it.”</p>
	<p>9.1 Social Media is defined as any online forum, internal or external to the Council which is used to publish information that can be accessed by the public or organisations internal or external to the Council.</p> <p>9.2 Social Media activity relates to the use of any Council equipment or personal devices, e.g. mobile phones, desktop computers, laptops or tablets, supplied to councillors or their own devices used for the purposes of communication to others including fellow councillors, employees or members of the public.</p>

	<p>9.3 Councillors shall comply with a local authority's Computer and I.T. Resources Acceptable Use Policy and shall abide by the Terms and Conditions as outlined by the local authority on taking up of office.</p> <p>9.4 The following is a list of examples of unacceptable use/misuse –</p> <ul style="list-style-type: none"> . Profane or derogatory language or content; . Content that promotes, fosters, or perpetuates discrimination on the basis of gender, civil status, family status, sexual orientation, disability, age, race, religious belief or membership of the Traveller Community; . Sexually explicit content or links to sexually explicit content; . Illegal activity or encouragement of same; . Information or content that may compromise the safety or security of the local authority, a local authority employee or another councillor; . Content that violates a legal ownership interest of any other party; . Information or comment on a matter that is currently before the courts; . Inclusion of personal data as defined under the Data Protection Acts;
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	<p>. Sensitive information provided to a councillor in their role as a director of a company or membership of a local authority audit committee or other information provided in confidence that if released into the public domain may prejudice the outcome of a statutory process.</p>
<p>10.3 Given the range and complexity of local government activity a code such as this cannot deal with all situations and eventualities which may arise. If other situations of potential conflict arise between personal and public interest or if instances of perceived questionable conduct arise, councillors should aim to deal with them in accordance with the principles and intent of the Code.”</p>	<p>14.3 Given the range and complexity of local government activity, a code such as this cannot deal with all situations and eventualities that may arise. If other situations of potential conflict arise between personal and public interest or if instances of perceived questionable conduct arise, councillors should aim to deal with them in accordance with the principles and intent of the Code.</p>