



**CYNGOR BWRDEISTREF SIROL**  
**RHONDDA CYNON TAF**  
**COUNTY BOROUGH COUNCIL**

**COMMITTEE SUMMONS**

C. Hanagan  
Service Director of Democratic Services & Communication  
Rhondda Cynon Taf County Borough Council  
The Pavilions  
Cambrian Park  
Clydach Vale CF40 2XX

Meeting Contact: Hannah Williams - Council Business Unit (01443 424062)

**YOU ARE SUMMONED** to a virtual meeting of **STANDARDS COMMITTEE** to be held on **FRIDAY, 19TH MARCH, 2021** at **10.00 AM**.

Non Committee Members and Members of the public may request the facility to address the Committee at their meetings on the business listed although facilitation of this request is at the discretion of the Chair. It is kindly asked that such notification is made to Democratic Services by Wednesday, 17 March 2021 on the contact details listed above, including stipulating whether the address will be in Welsh or English.

**AGENDA**

**Page  
No's**

**1. DECLARATION OF INTEREST**

To receive disclosures of personal interest from Members in accordance with the Code of Conduct

Note:

1. Members are requested to identify the item number and subject matter that their interest relates to and signify the nature of the personal interest: and
2. Where Members withdraw from a meeting as a consequence of the disclosure of a prejudicial interest they must notify the Chairman when they leave.

**2. MINUTES**

To approve as an accurate record, the minutes of the meeting held on 27<sup>th</sup> November 2020.

## REPORTS OF THE MONITORING OFFICER

- 3. ADJUDICATION PANEL FOR WALES ANNUAL REPORT 2019-2020**

To provide for Members' information a copy of the Adjudication Panel for Wales' Annual Report 2019-2020.

**13 - 30**
- 4. ADJUDICATION PANEL FOR WALES - RECENT TRIBUNAL DECISIONS**

To allow Members the opportunity to consider recent decisions made by the Adjudication Panel for Wales (APW).

**31 - 92**
- 5. UPDATE ON TOWN & COMMUNITY COUNCIL USE OF THEIR LOCAL RESOLUTION PROTOCOLS**

To provide Members with an update on Town & Community Council's use of their Local Resolution Protocol.

**93 - 96**
- 6. PUBLIC SERVICES OMBUDSMAN FOR WALES - CONSULTATION ON REVISED CODE OF CONDUCT GUIDANCE FOR MEMBERS OF PRINCIPAL COUNCILS AND COMMUNITY & TOWN COUNCILS**

To inform Members of the consultation initiated by the Public Services Ombudsman for Wales in respect of new draft guidance on the Members' Code of Conduct for both Principal Councils and Community and Town Councils and invite any comments to be provided in response to that consultation.

**97 - 238**
- 7. REVIEW OF THE PROCEDURES FOR DEALING WITH COMPLAINTS REFERRED TO THE COMMITTEE BY THE PSOW**

To review the procedures for dealing with complaints referred to the Committee by the PSOW and determine whether any amendments are required to be made and ensure they remain fit for purpose.

**239 - 272**
- 8. LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021 AND THE STATUTORY ETHICAL FRAMEWORK**

To inform the Committee of changes to the statutory ethical framework, which are being introduced by Part 4 of the Local Government and Elections (Wales) Act 2021 and seek agreement of the actions to be taken in response.

**273 - 278**
- 9. STANDARDS COMMITTEE ANNUAL REPORT 2019-2020 AND 2020-2021**

To consider the draft Standards Committee Annual Report for the Municipal Years 2019-2020 and 2020-2021.

**279 - 288**

## **10. URGENT BUSINESS**

To consider any items, which the Chairman, by reason of special circumstances, is of the opinion should be considered at the meeting as a matter of urgency.

### **Service Director of Democratic Services & Communication**

#### **Circulation:-**

**Independent Members** – M.Jehu, MBE (Chair), D. Bowen and J.Thomas

**County Borough Councillors:** M. Forey & E. Webster

**Community Councillor** R.Butler

**(Reserve Community Councillor Member:** C. Willis)

#### **Officers:**

Mr A Wilkins, Monitoring Officer

Mr C. Hanagan, Service Director of Democratic Services and Communication

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## **RHONDDA CYNON TAF COUNCIL STANDARDS COMMITTEE**

Minutes of the virtual meeting of the Standards Committee meeting held on Friday, 27 November 2020 at 10.00 am

### **County Borough Councillors - Standards Committee Members in attendance:-**

Mr M Jehu MBE  
Councillor M Forey    Councillor E Webster  
Mr D. Bowen    Mr R. Butler  
Mr J. Thomas

### **Officers in attendance**

Mr A Wilkins, Director of Legal Services  
Mr P Nicholls, Service Director, Legal Services

#### **1 Chair's Welcome**

The Chair welcomed the attendees to the meeting of the Standards Committee and took the opportunity to formally place on record his thanks to the former Reserve Independent Member, Mr C. Pallant, who had recently resigned from his position on the Committee. On behalf of the Committee, the Chair extended best wishes for the future to Mr Pallant.

#### **2 Declaration of Interest**

In accordance with the Council's Code of Conduct, Councillor R. Butler declared the following personal interest in Items 3, 4 and 5 of the agenda 'I am a Community Councillor for Llantwit Fardre Community Council, which is referenced throughout the three reports. I will not take part in the items, nor will I leave the meeting whilst the items are being discussed'.

#### **3 Minutes**

It was **RESOLVED** to approve the minutes of the 29<sup>th</sup> November 2019 as an accurate reflection of the meeting.

In respect of Minute No. 23, which stated that the Standards Conference would take place in 2021, the Monitoring Officer informed the Committee that given the current climate, the date had not yet been confirmed and that he would update Members in the near future.

#### **4 Standards Committee Work Programme 2020-2021**

The Monitoring Officer provided Members with the Standards Committee's Work Programme and the proposed items for consideration by the Standards Committee during the Municipal Year 2020-2021.

The Committee were reminded of the Standards Committee's Terms of

Reference, which set out the remit of the Committee to monitor, review and advise on matters relating to the Ethical code; Members Code of Conduct and associated matters of governance and probity.

Members' attention was drawn to Appendix 2 of the report, where the draft Work Programme for the Committee for the Municipal Year 2020-2021 was detailed. The Work Programme sought to reflect the ongoing priorities, standard reports and the frequency of reporting for the Committee's consideration.

The Chair welcomed the Work Programme and acknowledged that the Covid-19 pandemic had delayed some of the work intended to be considered by the Committee. As such, the Chair felt that it was a true reflection of the business needs of the Committee.

One Member was pleased to note that an update on the roll out of Code of Conduct Refresher Training was to be considered in March 2021, which was considered essential prior to the Election period.

(Note: Having previously declared an interest (Minute No. 2), Community Councillor R. Butler did not participate in this item.)

The Standards Committee **RESOLVED:**

1. To adopt the Standards Committee Work Programme for the 2020/2021 Municipal Year.

## **5 Public Services Ombudsman For Wales - Annual Report and Letter 2019 - 2020**

The Monitoring Officer provided Members with a summary of matters pertaining to standards of conduct of County, Town and Community Councillors as set out in the Ombudsman Annual Report and Annual Letter to this Council for 2019-2020.

The Committee were informed that the number of Code of Conduct Complaints had decreased by 18% since 2018-2019. Of the 231 Code of Conduct complaints received in 2019/20 Municipal Year, 135 were related to Town and Community Councils and 96 were related to Local Authorities. The officer added that there were no complaints made about Rhondda Cynon Taf County Borough Councillors during the year.

Members were informed that in January 2020, both the Chair and Monitoring Officer undertook a visit to one of the County Borough's Community Councils, namely Llantwit Fadre, as part of a mediation session due to ongoing issues with its Members. The Monitoring Officer was pleased to note that since the visit, issues, which were largely related to personality clashes, appeared to have resolved.

The Monitoring Officer continued and explained that the majority of Code of Conduct Complaints received during 2019/2020 related to matters of 'promotion of equality and respect' (49%) and 'disclosure and registration of interests' (17%). It was explained that the Ombudsman had raised concerns that the above-mentioned themes continue to dominate with a year on year increase in the number of complaints where bullying behaviour is alleged particularly from Clerks or employees/contractors of Local Authorities or Town/Community Councils. As such, the Ombudsman had highlighted that training is a key

component in addressing this particularly with Town/Community Councils.

Members were informed that the most common outcome of the complaints were that they were 'Closed after initial consideration.' Of the 235 complaints in 2019-20, 202 were closed under this outcome. These included decisions where there was no 'prima facie' evidence of a breach of the Code and it was not in the public interest to investigate.

The Monitoring Officer explained that in cases which cannot be concluded by the Ombudsman or feature serious breaches of the Code, it is necessary for the Ombudsman to refer these matters to a Standards Committee or the Adjudication Panel for Wales for consideration.

One Member referred to the table of complaints received by individual Local Authorities on page 161 and was pleased to note that RCT had only receive 0.16 complaints per 1000 residents during the year, which could partly be down to the improvements made to training.

A number of Members praised the Chair and Monitoring Officer for their intervention at Llantwit Fardre Community Council, which appeared to have been effective in preventing escalation. The Chair proposed that, when safe to do so, the Standards Committee visit the Community Councils in the area to remind them of their expectations, to which Committee Members were keen to be included.

(Note: Having previously declared an interest (Minute No. 2), Community Councillor R. Butler did not participate in this item.)

The Chair thanked the officer for the detailed update and the Standards Committee **RESOLVED:**

1. To note the matters relating to Code of Conduct Complaints reported in the Public Services Ombudsman for Wales' Annual Report and Annual Letter to this Council 2019-2020.

## **6 Public Services Ombudsman For Wales - Summary of Complaints 2019-2020**

The Monitoring Officer provided the Standards Committee with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st April 2019 – 31st March 2020.

Following Members' request in the last Municipal Year, contained in a table within the report was a summary of anonymised complaints made against Members and submitted to the Ombudsman for the period 1st April 2019 – 31st March 2020 for consideration.

One Member referred to the complaint received on 11<sup>th</sup> June 2019, whereby the Ombudsman considered the matters which were alleged did not in fact constitute a breach. They found it was not uncommon for Elected Members to say things about political opponents which others may consider to be rude or offensive and it was not the purpose of the Code of Conduct to inhibit free speech and the robust expression of political differences. Discussions ensued and it was noted that there was a fine line between direct speech and aggression. Members felt that effective, experienced and confident chairing of a meeting was essential in

addressing passionate debate.

The Chair felt it was beneficial to note the recurring themes of the complaints, for the Committee to take on board during their future visits to the Community Councils.

(Note: Having previously declared an interest (Minute No. 2), Community Councillor R. Butler did not participate in this item.)

The Standards Committee **RESOLVED:**

1. To note the content of the report.

## **7 Public Services Ombudsman For Wales - Code of Conduct Casebooks**

In his report, the Monitoring Officer provided the Committee with Code of Conduct Casebooks (Issues 23) produced by the Public Services Ombudsman for Wales and following consideration thereof, it was **RESOLVED:**

1. To note the information contained within the report.

## **8 Code of Conduct Refresher Training**

The Monitoring Officer provided the Standards Committee with a verbal update Code of Conduct refresher training.

The Monitoring Officer reminded the Committee that the roll out of refresher training was endorsed at its last meeting and that an update would be provided at a future meeting in relation to attendance at the training, together with any relevant feedback received.

The Standards Committee **RESOLVED:**

1. To note the update.

## **9 Adjudication Panel for Wales - Recent Tribunal Decisions**

The Monitoring Officer provided the Standards Committee with the report to consider recent decisions made by the Adjudication Panel for Wales (APW).

The Monitoring Officer explained that the ethical framework set under Part III of the Local Government Act 2000 included the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct.

Members were referred to the appendices of the report, which detailed a number of APW decision notices, that had been issued following the conclusion of the cases. Of particular interest to the Committee was the case detailed at Appendix 4 of the report, which showed the scrutiny of a decision made by a Standards Committee.

The Committee thanked the Monitoring Officer for the information before them and acknowledged the extensive deliberation of cases by the APW. The Committee were in agreement that the approach adopted by the APW in formulating its decisions and sanction was beneficial, in light of its own role when conducting Code of Conduct Hearings. Although the Committee agreed that a consistent and fair approach was needed when making decisions at its own Hearings, it was acknowledged that each individual case would need to be



considered on its own merit and therefore, it would be impossible to have fixed framework on sanction decisions.

Members noted that should an appellant choose to appeal the decision of a Standards Committee, there was the possibility of the APW imposing a more stringent sanction.

The Chair thanked the Monitoring Officer for the report and was pleased to note that the Standards Committee had never had a decision appealed but commented that the examples provided within the report could only further strengthen the Committee's position. The Chair suggested that it would be useful for the Monitoring Officer at Cardiff Council to attend a future meeting of the Committee to discuss the first-hand experience of a Tribunal decision.

The Standards Committee **RESOLVED:**

1. To consider the copies of the recent decisions made by the Adjudication Panel for Wales (as appended to the report); and
2. To determine whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

## **10 Adjudication Panel for Wales - Presidential Guidance**

The Monitoring Officer provided the Standards Committee with the report, which allowed Members to consider the Presidential Guidance, which had been updated and issued by the President of the Adjudication Panel for Wales (APW).

Members were informed that the updated Guidance was not legally binding and had been provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales ("APW") proceedings.

The Standards Committee acknowledged that the guidance did not apply to proceedings before the Committee's Hearings Panel, but were pleased to note that updated guidance on the disclosure of evidence had been issued to assist Monitoring Officers in their duty.

The Standards Committee **RESOLVED:**

1. To note the updated Presidential Guidance issued by the Adjudication Panel for Wales.

## **11 Dispensation Applications**

The Monitoring Officer outlined the following applications for dispensation for the Standards Committee's endorsement:

1. The Monitoring Officer sought Committee's endorsement to grant dispensation to County Borough Councillor P. Jarman to speak and vote on all matters for the duration and adoption of the 2019-20 Budget process in her capacity as Leader of the Opposition.

It was explained that County Borough Councillor P. Jarman's son works in the Streetcare Department and lives with her at her home address and therefore, Councillor Jarman sought a dispensation to speak and vote on all services affected by the Budget. In her application for dispensation,

Councillor Jarman stated that by virtue of being Leader of the Opposition Group, her participation in the Budget process is justified.

The Monitoring Officer continued and advised that one of the grounds for granting dispensation was:

“(f) the participation of the Member in the business to which the interest relates is justified by the Member’s particular role or expertise”

2. The Monitoring Officer sought Committee’s endorsement to grant dispensation to County Borough Councillor Bevan to speak and vote on all matters relating to the Community and Children’s Services Group, save for any specific matters that directly affect his daughter who is employed by the Council as the Service Manager Community and Children’s Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed by the Standards Committee on an annual basis.

Members were informed that Councillor Bevan acknowledged that any dispensation awarded cannot be used if the matter under consideration would confer a greater benefit on the employed family member than on other tax payers, ratepayers or inhabitants of the Council’s area, or be such that a member of the public might reasonably conclude it would significantly affect his ability to act purely on the merits of the case and in the public interest if he were to take part in the discussion.

In his application for dispensation Councillor Bevan further states that by virtue of being a Cabinet Member his participation in matters relating to the Community and Children’s Services Group is justified.

The Monitoring Officer continued and advised that two of the grounds for granting a dispensation were:-

“(d) the nature of the Member’s interest is such that the Member’s participation in the business to which the interest relates would not damage public confidence in the conduct of the relevant authority’s business”; and

“(f) the participation of the member in the business to which the interest relates is justified by the member’s particular role or expertise.”

3. The Monitoring Officer then sought Committee’s endorsement to grant dispensation to County Borough Councillor Michael Powell a dispensation to speak and vote on all matters relating to the Children’s Services department (within the Community and Children’s Group), save for any specific matters that directly affect his wife, who is employed by the Council in the Children’s Services department as a Contact Worker, with such dispensation being reviewed by the Standards Committee on an annual basis.

Members were informed that County Borough Councillor Michael

Powell's wife works in the Children's Services department as a Contact Worker. In his application Councillor Powell stated that his wife is not in a decision making position.

The Monitoring Officer explained that any dispensation awarded cannot be used if the matter under consideration would confer a greater benefit on his wife than on other tax payers, ratepayers or inhabitants of the Council's area, or be such that a member of the public might reasonably conclude it would significantly affect his ability to act purely on the merits of the case and in the public interest if Councillor Powell were to take part in the discussion.

The Monitoring Officer continued and advised that the ground for granting dispensation was:

*(c) the participation of the member in the business to which the interest relates is justified by the member's particular role or expertise;*

The Standards Committee **RESOLVED:**

1. To grant County Borough Councillor Pauline Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2021-22 Budget process in her capacity as Leader of the Opposition;
2. To grant County Borough Councillor Robert Bevan a dispensation to speak and vote on all matters relating to the Community and Children's Services Group, save for any specific matters that directly affect his daughter, who is employed by the Council in the Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed by the Standards Committee on an annual basis; and
3. To grant a dispensation to County Borough Councillor Michael Powell to speak and vote on all matters relating to the Children's Services department (within the Community and Children's Services Group), save for any specific matters that directly affect his wife who is employed by the Council in the Children's Services department as a Contact Worker, with such dispensation being reviewed on an annual basis by the Standards Committee.

**This meeting closed at 11.00 am**

**M Jehu MBE  
Chairman**

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## **RHONDDA CYNON TAF**

### **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

#### **STANDARDS COMMITTEE**

**19 MARCH 2021**

#### **ADJUDICATION PANEL FOR WALES' ANNUAL REPORT 2019-2020**

#### **REPORT OF THE MONITORING OFFICER**

##### **1. PURPOSE OF REPORT**

To provide for Members' information a copy of the Adjudication Panel for Wales' Annual Report 2019-2020.

##### **2. RECOMMENDATION**

2.1 To note the contents of the Adjudication Panel for Wales' Annual Report 2019-2020 contained at Appendix 1 to the report.

##### **3. BACKGROUND**

3.1 The Adjudication Panel for Wales produces an Annual Report summarising the activity of the Panel during the relevant reporting period.

3.2 Its latest published Annual Report for 2019-2020 is provided for Members' information at Appendix 1.

3.3 It provides details of the membership of the Panel, an analysis of its performance and a useful section summarising cases and decisions made by the Panel during the reporting period.

**LOCAL GOVERNMENT ACT 1972**  
**AS AMENDED BY**  
**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**  
**STANDARDS COMMITTEE**  
**19 MARCH 2021**  
**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

**Freestanding Matter**

**Contact:** Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)



# Adjudication Panel for Wales Annual Report

Year 2019 – 2020

PDC / APW

PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.



# Foreword

This is my fifth annual report as President of the Adjudication Panel for Wales. The report covers the period 1 April 2019 – 31 March 2020.

We aim to ensure that the Panel serves the public interest by dealing with any disputes both efficiently and effectively. We make every effort to ensure that all those involved in the dispute feel that the dispute has been fairly resolved within as short a timescale as is reasonable. We are conscious that the public must have confidence that any breaches of the Code of Conduct will be dealt with fairly in order to uphold trust and confidence in local democracy.

The cases heard during this financial year involved a variety of alleged breaches of the Code, but for all cases the question of whether the councillor had brought the authority or his office into disrepute arose. The purpose of the Code, standards committees and the Panel is to ensure that not only are standards in public life set out clearly and followed, but to maintain public confidence in local democracy. This aspect of “public interest” remains of central importance as reflected in the Sanctions Guidance.

The Panel has grown to ensure cases are resolved efficiently and to expand the skills and knowledge available to it. Two new legal members were appointed, and the APW took part in the cross-ticketing of lay members to appoint another member. I was gratified to see the success of our members in being cross-ticketed to sister tribunals, demonstrating the abilities of our members and developing cross-jurisdictional judgecraft.

This financial year the Panel gained access to technology allowing it to hear cases remotely and in public. This has enabled the Panel’s work to continue unaffected by the pandemic underway as this report is written, and may lead to changes in our procedures; for example, pre-hearing reviews may be heard virtually, saving costs and travel time. The first Panel Practice Direction was issued to ensure councillors fully understand the importance in completing the response form and the consequences of failing to do so.

Any questions or comments arising as to any aspect of the workings of the Panel, or as to the contents of the Report, are most welcome and should in the first instance be addressed to the Registrar.



**Claire Sharp**  
**President, Adjudication Panel for Wales**

# Section 1 – About Us

In this section:

- Basis for the APW
- The APW's Function
- The APW's Regulations
- The APW's Process
- Members of the APW
- Appointments
- Training
- Contacting the APW
- Accessing the APW

## Basis for the APW

The Adjudication Panel for Wales (APW) is an independent tribunal that has been set up to determine alleged breaches against an authority's statutory Code of Conduct by elected and co-opted members of Welsh county, county borough and community councils, fire and national park authorities.

The APW was established under Part III of the Local Government Act 2000.

## The APW's Function

The Code of Conduct for an authority provides its members with a set of standards expected of them in public life. The code of conduct covers various requirements as to how members should conduct themselves and includes requirements in relation to equality, personal and prejudicial interests, confidential information, their authority's resources and the need to avoid bringing their office or authority into disrepute.

The APW has two statutory functions in relation to breaches of the Code of Conduct:

- to form case or interim case tribunals ("Case Tribunals") to consider **references** from the Public Service Ombudsman for Wales (PSOW), following the investigation of allegations that a member has failed to comply with their authority's Code of Conduct; and
- to consider **appeals** from members against the decisions of local authority standards committees that they have breached the Code of Conduct ("Appeal Tribunals").

## The APW's Regulations

- The APW operates in accordance with its procedural regulations and other associated legislation. The regulations ensure that all cases heard by the APW are treated fairly, consistently, promptly and justly. They ensure that everyone who comes before the APW clearly understands the steps they must take so that the facts of the dispute and the relevant arguments can be presented effectively to the APW. They also ensure that every party to a case understands the arguments of the other party and can respond to them.

APW's procedures are governed by the following legislation:

- The Local Government Act 2000 (as amended);
- The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 (as amended), and
- The Local Government Investigations (Functions of Monitoring Officers and Standards Committees (Wales) Regulations 2001 (as amended)).

## The APW's Process

Anyone wishing to respond to a reference from the PSOW or to make an application for permission to appeal to the APW must complete and send the relevant form to the APW.

At an APW hearing the panel is composed of a legally qualified chairperson and 2 lay members. Legally qualified members can also sit as a lay member. APW hearings are normally held in public and take place near to the authority area.

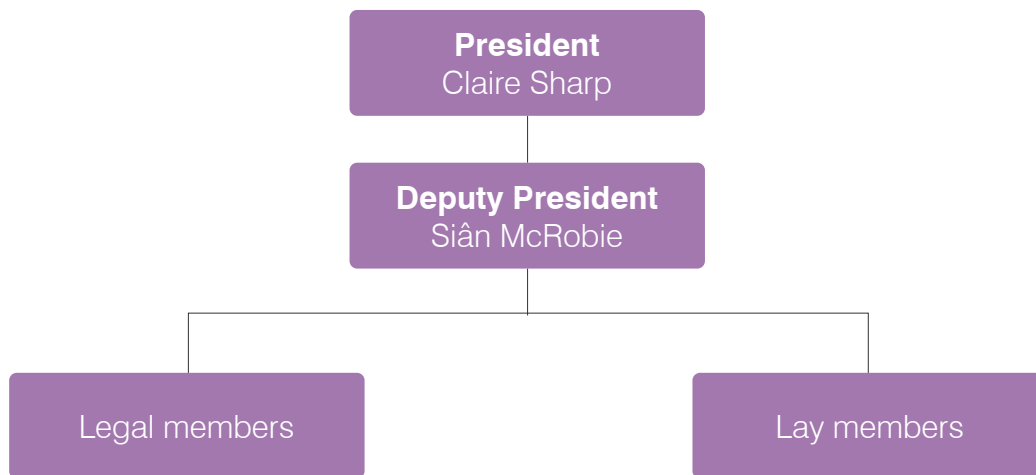
The APW publishes its decisions on the website for the APW. Decisions of Case Tribunals can be appealed on limited grounds to the High Court. Permission to appeal to the High Court must first be sought from the High Court.

Full information and guidance about the APW and its procedures, are provided on the website for the APW. Alternatively, please contact the APW administration for further information or if you would like to receive publications in a different format. The contact details can be found on page 7.

## Members of the APW

Appointments to the APW are made by the First Minister after consideration of recommendations made by the Judicial Appointments Commission.

<b>President</b>	The President has judicial responsibility for the APW and its members.
<b>Deputy President</b>	The Deputy President supports the President and fulfils the duties of President if the President is unable to carry out her duties, either temporarily or permanently.
<b>Legal Members</b>	Legal members are qualified lawyers and have responsibility for conducting proceedings at hearings and advising the administration on matters of law. Legal members write APW decisions and give directions where necessary.
<b>Lay Members</b>	Lay members have a wide range of knowledge and experience relevant to the work of the APW.
<b>Administration</b>	The day-to-day administration is largely delegated to the administration which deals with all the preliminary paperwork and the processing of applications to the APW. The administration consults the President and/or legal members on all legal points arising during the preliminary pre-hearing stages of the proceedings and sends rulings and directions in writing to the parties. The administration acts as a point of contact for chairpersons, members and APW users and attends hearings to help with the efficient running of proceedings.



## Appointments

During this period, we have appointed 1 new lay member cross ticketed from another tribunal. 2 new legal members were appointed (through the Judicial Appointments Commission) under the Local Government Act 2000.

## Training

A training seminar was held on 10 May 2019, with a continued emphasis on judgecraft. Sessions on communication and freedom of expression were also delivered. All new members received induction training in addition (legal members in May 2019 and lay member in April 2020).

A programme of performance appraisal for APW members has been completed over previous years. It is anticipated that the next round of performance appraisal for APW members will start during the course of the 2020/21 year, depending on the pandemic.

## Contacting the APW

To contact the APW Administration:

APW Address: Adjudication Panel for Wales  
Oak House  
Cleppa Park  
Celtic Springs  
Newport  
NP10 8BD

APW Helpline: 03000 259805  
APW E-mail: [adjudication.panel@gov.wales](mailto:adjudication.panel@gov.wales)

## Accessing the APW

The APW is happy to communicate with you in Welsh or English. If a Welsh speaker is not immediately available then we will arrange for a Welsh-speaking member of staff to phone you back.

You can choose to have your hearing conducted in Welsh or English. If your first language is not Welsh or English and you wish to speak in your first language during the hearing, we can arrange for an interpreter to be present. If you need a sign language interpreter to attend the hearing we will arrange this.

If you or anyone you are bringing to the hearing has any other access requirements that may affect our arrangements for the hearing, provisions will be made.

To enable arrangements for interpreters or to make provisions for any additional needs of attendees, sufficient notice must be given to the administration.

## Section 2 – Performance and Progress

In this section:

- Numbers and statistics
- Hearings Data
- Onward appeals
- Achievement against key performance indicators
- Complaints

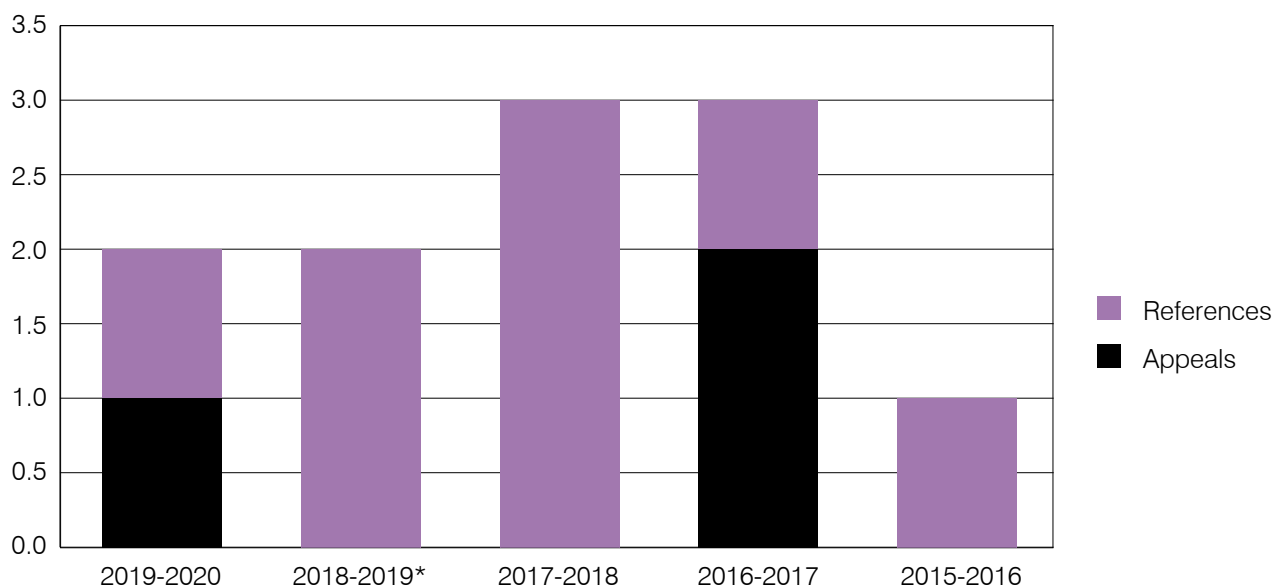
### Numbers and Statistics

A Tribunal year runs from April to March. As the numbers of cases received are relatively low, figures are given for a 5 year period to allow for comparison.

The following statistics are collated:

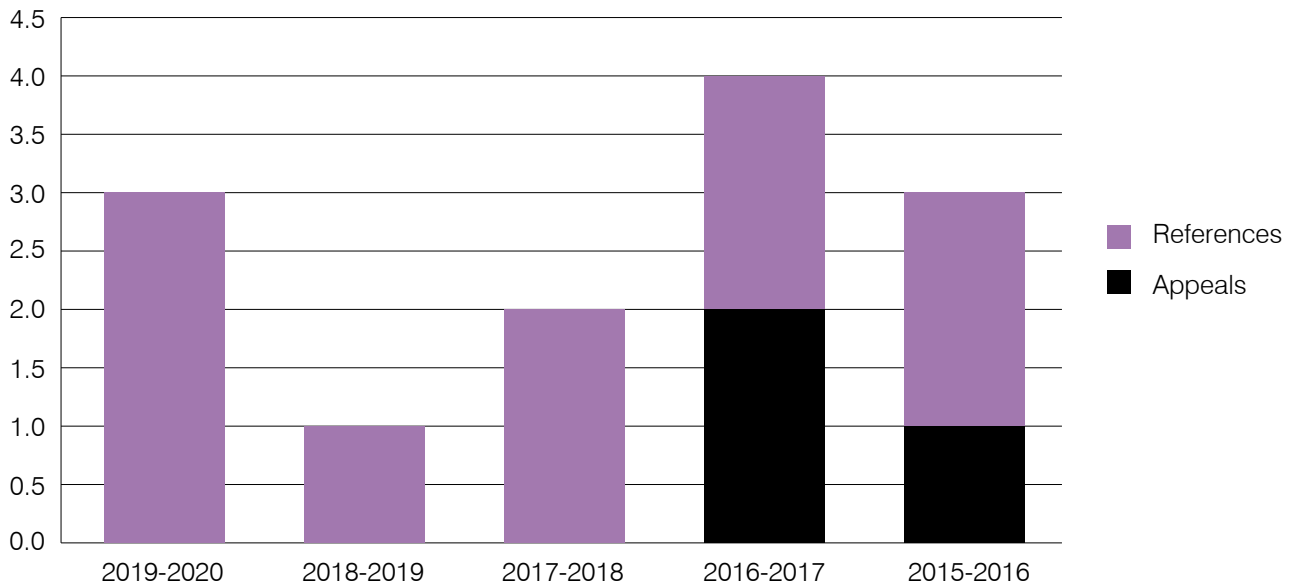
- Number of references and appeals received
- Type of applications received and registered
- Number of applications finalised
- Outcome of applications.

Graph 2.1: Number of references and appeals received by year



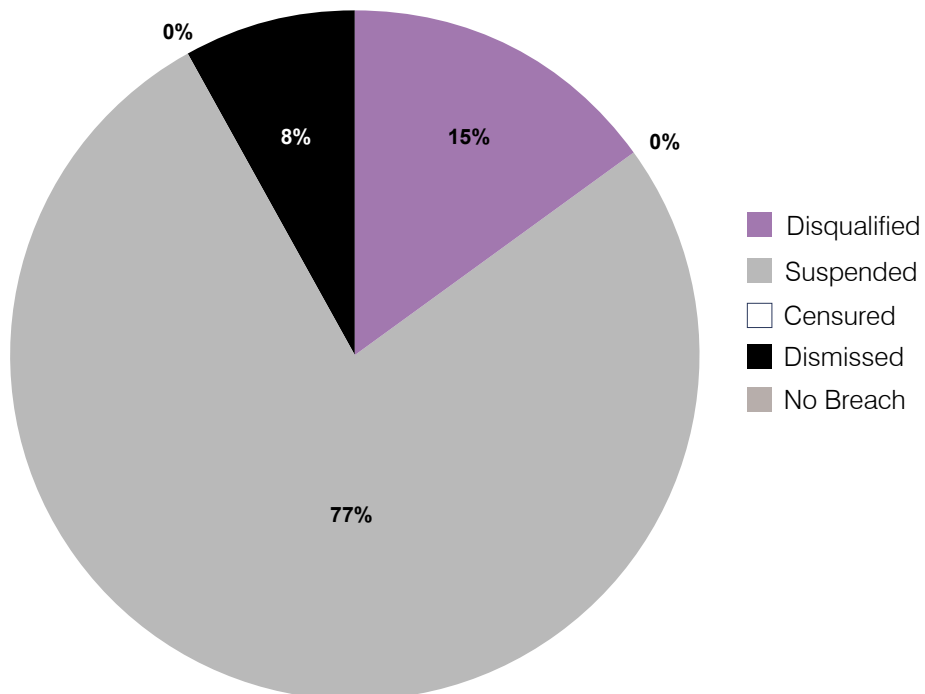
\*The 2018-2019 figure was incorrectly detailed in the 2018-2019 Annual Report which has been corrected above.

Graph 2.2: Number of references and appeals decided by year April 2015-March 2020

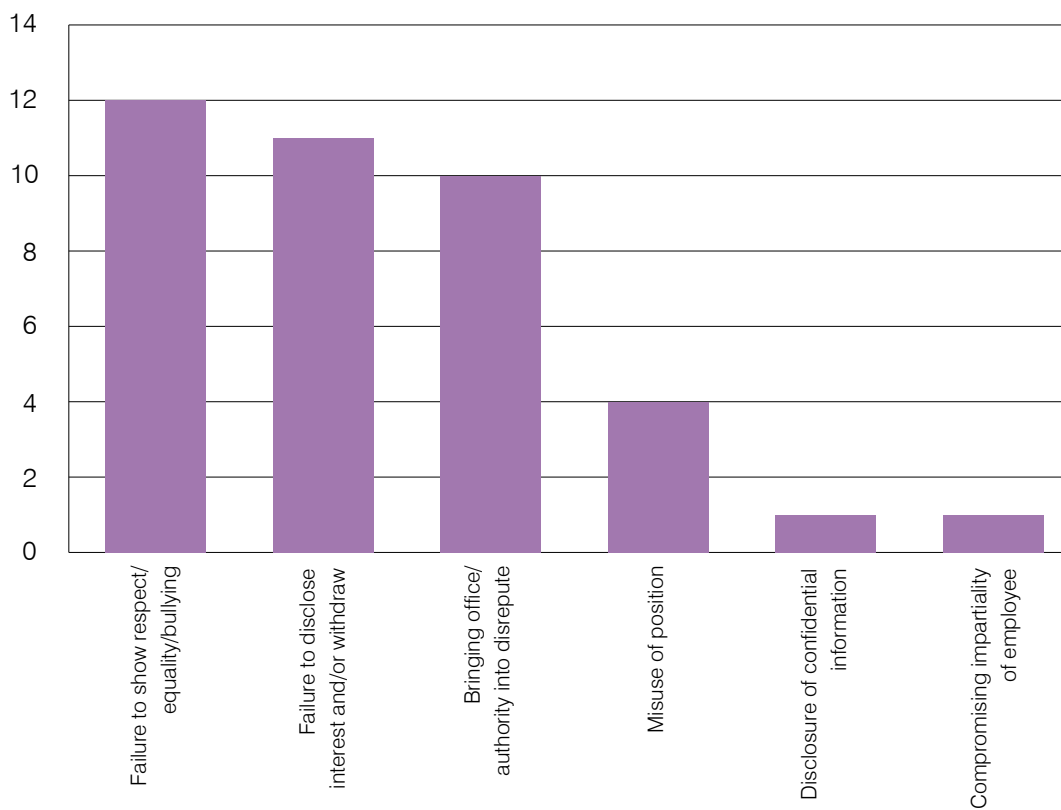


Charts 2.3: Outcomes of references and appeals April 2015-March 2020

The chart below shows the outcome of references and appeals decided by the Adjudication Panel over the last 5 years



Graph 2.4: Breaches by type April 2015-March 2020



### Hearings data

During 2019-2020:

Type	Length (in days)
Reference	5 hearing days
Appeal	0 hearing days

There was also 3 telephone conferences which took place in relation to these cases.

### Onward appeals

Applications for permission to appeal a decision of a Case Tribunal or Interim Case Tribunal can be made on limited grounds to the High Court. Over the period of this report, no applications for permission were made.

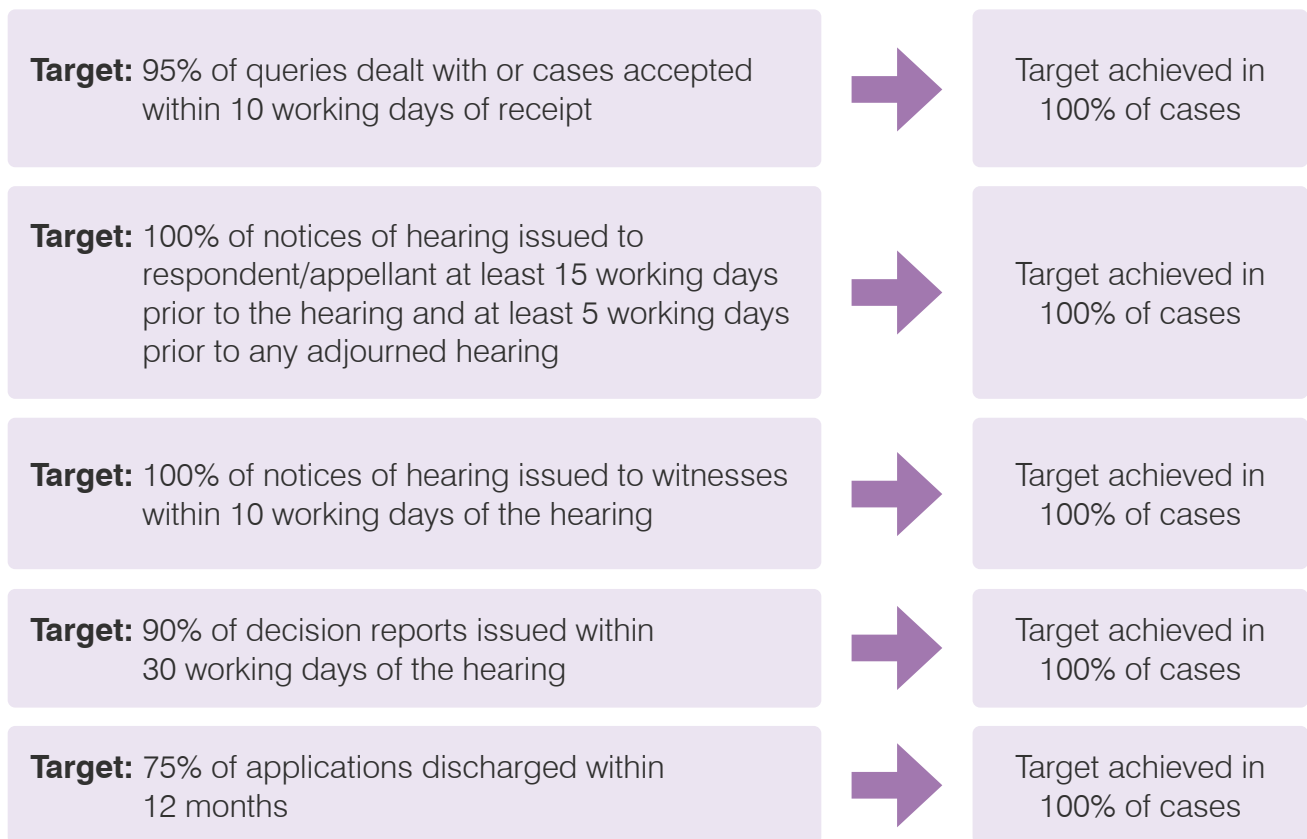


## Achievement against key performance indicators

To monitor how effectively services are delivered, we have key performance indicators aimed at measuring two key aspects of our business; the speed of our service and the quality of service through customer satisfaction.

To measure the speed of our service, we have a series of primary performance indicators based on the time taken to process an application – from receipt to the hearing or disposal (see below).

### Speed of our service 2018-2019



### Complaints

The APW received no formal complaints during the reporting period.

## Section 3 – Case summaries

In this section:

- References
- Appeals

### References

During the reporting period, 3 case tribunals took place resulting from a reference from the Ombudsman. A summary of the cases determined by the APW appears below.

#### APW/001/2018-019/CT

##### Monmouthshire County Council (currently Mathern Community Council)

The allegations were that the councillor had breached the Code of Conduct of Monmouthshire County Council by conducting himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute.

The conduct arose during a previous case tribunal involving the councillor (in which he had been found to have homophobic statements over several months in 2016 and had been suspended by Panel for two months) and shortly after that hearing. The councillor made two statements in July 2018 when the Panel was delivering its finding regarding sanction at the first case tribunal and in a letter sent afterwards to the Panel, which were alleged to be a breach of paragraph 6(1)(a) of the Code.

The case tribunal dismissed the reference on the basis that the Public Services Ombudsman for Wales had not received a written allegation as required under section 69(1) of the Local Government Act 2000 to commence an investigation to come before a second case tribunal. It did not accept that the Ombudsman could rely on the written allegation received for the first case tribunal as the allegations before the second case tribunal did not come to his attention as a result of the investigation undertaken for the first case tribunal.

#### APW/002/2018-019/CT

##### Powys County Council and Brecon Beacons National Park Authority

The allegations were that the councillor had breached the Code of Conduct for Powys County Council and Brecon Beacons National Park Authority by failing to show respect and consideration for others, conducting himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute, and using or attempting to use his position improperly to confer on or secure for himself or any other person an advantage or create or avoid for himself or any other person a disadvantage.

The proceedings arose from an incident at a meeting of the National Park Authority where the councillor made contact with part of another councillor's anatomy, which led to a complaint being raised. The accused councillor later made a number of comments to third parties which appeared to be threatening consequences if the complaint was continued; these comments led to a new complaint from one of the third parties present.

The case tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Powys County Council and Brecon Beacons National Park Authority as follows.

- You must show respect and consideration for others (paragraph 4(b));
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a)).

The case tribunal concluded by unanimous decision that the councillor should be suspended for four months from being a member of Powys County Council and Brecon Beacons National Park Authority within the meaning of the Local Government Act 2000. It also recommended that the councillor received further training regarding his duties under the Code of Conduct from or on behalf of the monitoring officer of the Brecon Beacons National Park Authority by 31 January 2020.

APW/001/2019-020/CT  
Flintshire County Council

The allegations were that the councillor had breached the Code of Conduct of Flintshire County Council by conducting himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute; by using or attempting to use his position improperly to confer on or secure for himself or any other person an advantage or create or avoid for himself or any other person a disadvantage; and by using or authorising others to use the resources of the authority imprudently, in breach of the authority's requirements, unlawfully, other than in a manner which is calculated to facilitate or to be conducive to the discharge of the functions of the authority or office to which he had been elected or appointed, or improperly for political or private purposes.

The allegations centred on alleged conduct by the councillor involving one member of council staff. It was alleged that the councillor had assisted the member of staff to giving her an opportunity to view interview questions, and that he had used or allowed the member of staff to use a vehicle hired through a council scheme in breach of paragraph 7(b) of the Code. It was further alleged that the councillor had conducted himself in a manner that could reasonably be regarded as bringing his office or the authority into disrepute through the use or authorisation of the use of the vehicle, and by the exchange of inappropriate messages, including those of a sexual nature, with the member of staff.

The case tribunal found by unanimous decision that the councillor had failed to comply with Flintshire County Council's Code of Conduct as follows:

- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a)).

The case tribunal concluded by unanimous decision that the councillor should be suspended for three months from being a member of Flintshire County Council within the meaning of the Local Government Act 2000.

## Appeals

One application to appeal was made to the President of the APW during the reporting period. Permission was granted to appeal the sanction imposed by the standards committee of the relevant authority and the appeal was concluded during the following financial year.

## Section 4 – Business Priorities

In this section:

- Business priorities for 2020-2021

It is important that the APW continues to develop in order to deliver the best possible service for our customers. This section is about how the APW will build on its achievements through focusing on business priorities and our commitment to our customers.

### Business Priorities 2020-2021

- Plan and deliver an all-members training event;
- Complete a communication strategy in order to inform the public in a more accessible manner about the APW and its work, including updating the APW website to include non-written forms of communication;
- Deliver an effective and efficient service, meeting key performance indicators;
- Provide further guidance to users on a variety of topics.

## Section 5 – Expenditure

In this section:

- Expenditure for 2019-2020

### Expenditure for 2019-2020

Content	Amount
Members Fees and Expenses (proceedings and training)	£30,072
Tribunal events (hearing and other costs)	£4,006
<b>Total</b>	<b>£34,078</b>

rounded to the nearest £1,000



## **RHONDDA CYNON TAF**

### **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

#### **STANDARDS COMMITTEE**

**19 MARCH 2021**

#### **ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS**

#### **INFORMATION REPORT OF THE MONITORING OFFICER**

##### **1. PURPOSE OF REPORT**

To allow Members the opportunity to consider recent decisions made by the Adjudication Panel for Wales (APW).

##### **2. RECOMMENDATION**

- 2.1 It is recommended the Committee considers the copies of the recent decisions made by the Adjudication Panel for Wales (as appended to the report); and
- 2.2 Determines whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

##### **3. BACKGROUND**

3.1 The ethical framework set under Part III of the Local Government Act 2000 included the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct. The operation of the Panel is governed by Regulations issued by the Welsh Government.

3.2 The APW issues decision notices following the conclusion of the cases it considers and in that respect Members will find copies of the following decisions appended to the report:

Appendix 1 - APW/002/2020-021/CT – Former Community Councillor Baguley

Appendix 2 - APW/001/2020/CT - Councillor Kevin O'Neill

3.3 The Committee may find it helpful to consider those decisions and the approach adopted by the APW in formulating its decision and sanctions (where relevant) in light of its own role when conducting Code of Conduct hearings.

3.4 The Committee may also wish to consider whether there are any possible messages or lessons to be learnt arising out of those decisions that could be communicated as part of future training for Members on the Code of Conduct.

**4. LEGAL IMPLICATIONS**

4.1 There are no legal implications arising from this report.

**5. CONSULTATION**

5.1 There are no consultation implications arising from this report.

**6. EQUALITY AND DIVERSITY IMPLICATIONS**

6.1 There are no equality and diversity implications arising from this report.

**7. FINANCIAL AND RESOURCE IMPLICATIONS**

7.1 There are no financial implications arising from this report.



**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**STANDARDS COMMITTEE**

**19 MARCH 2021**

**REPORT OF MONITORING OFFICER**

**ADJUDICATION PANEL FOR WALES – RECENT TRIBUNAL DECISIONS**

**BACKGROUND PAPERS**

**Freestanding Matter**

**Contact:** Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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## DECISION REPORT

**TRIBUNAL REFERENCE NUMBER:** APW/002/2020-021/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT**

**RESPONDENT:** Former Community Councillor Baguley

**RELEVANT AUTHORITY:** Sully and Lavernock Community Council

### 1. INTRODUCTION

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 The Case Tribunal determined its adjudication on the basis of the papers, at a meeting on 16 December 2020 conducted by means of remote attendance.

### 2. DOCUMENTS

#### 2.1 Reference from the Public Services Ombudsman for Wales

2.1.1 In a letter dated 16 September 2020, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against former Community Councillor Baguley (“the Respondent”).

2.1.2 **Allegation 1** was that the Respondent had breached the Code of Conduct for Members of Sully and Lavernock Community Council (“the Code”) as follows: That the Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019, which it was alleged could reasonably be regarded as bringing the Councillor’s office or authority into disrepute and thereby breached Paragraph 6(1) of the Code.

2.1.3 During the course of the investigation, the Ombudsman extended the investigation to include **Allegation 2** as follows: That the Respondent allegedly failed to supply information and evidence in respect of the privacy status of the relevant posts, in non-compliance with requests of the Ombudsman in

connection with an investigation conducted in accordance with his statutory powers and thereby breached Paragraph 6(2) of the Code.

## **2.2 The Details of Allegation 1: Three Facebook Posts**

2.2.1 The three Facebook posts referenced in **Allegation 1** are as follows:

i) On 10 January 2019, responding to a Telegraph article titled “What if...Yvette Cooper was Labour leader”, Councillor Baguley wrote: “imagine this! This bitch is driving remain when the people of her constituency overwhelmingly [sic] voted out. A traitorous cow and one I hope she ends up with a noose around her neck!”

ii) On 9 March 2019 Councillor Baguley posted an online article about Shamima Begum and stated the following: “I hope that it [sic]she does carry out some atrocity Anna Soubry would be my chosen target”

iii) On 11 March 2019 Councillor Baguley commented on a video of Diane Abbott speaking at a conference. He wrote: “fucking idiot! Get me a gun please!”

2.2.2 The evidence was comprised of a bundle of Tribunal case papers including copies of numerous Facebook posts and correspondence to and from the Council’s Monitoring Officer, the Ombudsman and the Respondent.

### **The Respondent’s response to Allegation 1.**

2.2.3 In an e-mail to the Ombudsman dated 10 July 2019, the Respondent stated “(a) Facebook have their own code of conduct which I have not fallen foul of as they would have censored the comments and (b) many of the comments made are of friends of mine and not my own.”

2.2.4 On 20 August 2019, he wrote as follows to the Ombudsman; “my comments on Facebook are my own beliefs and have not been censored by Facebook.”

2.2.5 On 17 October 2019 he wrote to the Ombudsman to say that he had consulted a solicitor and; “he feels (as would any fair minded person) that they are political opinions and I fully stand by them.”

2.2.6 On 12 November 2019, he said that; “Facebook generally remove offensive sexist and racist comments automatically as they have identifiers built into the algorithm so if they were offensive they would have been removed.”

2.2.7 On 8 June 2020, in response to written interview questions, the Respondent responded as follows;

- In relation to Paragraph 6(1)(a); “This is ambiguous as the word reasonably is subjective and open to interpretation.”

- With regard to the Facebook post, dated 10 January 2019, the Respondent explained that he had a; “long held personal dislike of this individual from my days living in her constituency and I agree my comments are a bit strong.”

- As to the public nature of the postings; “I assumed it was locked down but was obviously wrong.”

- With regard to the Facebook post, dated 9 March 2019, he explained what he meant as; “I would rather turn a gun on myself rather than listen to her” and as to the status of the post, he said; “I did not know whether public or not.”

- In relation to the Facebook post, dated 11 March 2019, the Respondent explained; “I dislike Anna Soubry” and as to the status of the post, he said; “Didn’t know it was public or private”.

-As to the nature of the posts, the Respondent stated; “Facebook always remove comments and posts they feel are offensive but they remained which shows they were ok with them”.

-Finally, the Respondent explained his; “long standing dislike of the labour party and its officials and followers” from negative childhood experience.

-As to freedom of expression; “I am also allowed to hold my views as free speech and opinions is not yet illegal in the UK”.

## **2.3 Allegation 2: Failure to comply with Ombudsman’s requests**

2.3.1 The Ombudsman’s requests referenced in **Allegation 2** and the Respondent’s responses are as follows:

i) On 8 November 2019: “In your email of 10 July 2019, you said that you had it confirmed by Facebook support that your posts are not visible to anyone but your friends and this has been the case since 2013. It would assist the investigation if you could send me a copy of the activity log on your Facebook account to show when your privacy settings were changed and also a copy of the confirmation by Facebook that your posts have not been visible to anyone but your friends since 2013.” The Respondent replied almost immediately by sending a screenshot of his settings.

ii) On 12 November 2019: an e-mail advising the Respondent that the screenshot he had sent in response to i) above was of his current settings and asking again for his historical activity log. The Respondent was also asked to provide confirmation from Facebook to support his claim that it had confirmed his posts were not visible to anyone since 2013 and to confirm how he received this confirmation (e.g. by email or verbally by phone). Councillor Baguley responded the same day by e-mail; “No idea how to do that sorry can you tell me how?”.

iii) On 15 November: an e-mail to the Respondent, advising him how he could access his activity log. The Respondent did not respond to the email.

2.3.2 In response to the written interview questions on 8 June 2020, the Respondent stated as follows;

- With regard to his original comment that his posts had not been visible to anyone but his friend since 2013, he said that he had meant; "I checked my settings" and explained that he had contacted Facebook; "I phoned them and after a long and convoluted goose chase I got nowhere basically."

- As to whether he was aware of how Facebook settings work; "Not really" and as to his failure to provide a historical activity log, he said; "I didn't know how" and as to his continued failure to provide the same following guidance, he repeated; "No idea how to do it".

- As to the discrepancy between the posts being visible in 2019 and the Respondent's version of events that the posts had been visible to friends only from 2013 onwards, he said; "I thought this was the case".

-Finally, when asked when he changed to private or "friends" setting, the Respondent replied; "When I found out they had been strangely changed to public, maybe by my eldest son who has access and sometimes uses pictures I post".

2.3.3 The evidence was again comprised in the bundle of Tribunal case papers including correspondence from the Ombudsman and the Respondent.

### 3. FINDINGS OF FACT

3.1 The Case Tribunal noted the following **undisputed** material facts;

3.1.1 The Respondent was co-opted as a Community Councillor to Sully and Lavernock Community Council in May 2017. He resigned from this role in September 2020.

3.1.2 The Respondent signed a Declaration of Office and Undertaking regarding the Code of Conduct on 27th June 2017.

3.1.3 The Respondent did not attend any training in relation to the Code of Conduct or in relation to the use of social media during his period of office.

3.1.4 The Respondent posted three public Facebook messages on 10th January, 9th March and 11th March 2019 about three high profile UK politicians, the contents of which are not in dispute.

3.2 The Case Tribunal found the following in relation to the **disputed** material facts;

## **Allegation 1**

3.2.1 That the Respondent was acting in a private capacity when he posted the three public Facebook messages in question. Certain Facebook posts sent by the Respondent did refer to the Relevant Authority, however the Facebook posts referenced in **Allegation 1** were not sent in this context. No evidence had been provided as to whether the Respondent's Facebook profile referred to his Community Council status.

3.2.2 That although the Facebook posts were written in the context of sharing political views on Facebook, the comments complained of went far beyond what could reasonably be considered to be political expression. It was however straightforward to separate the political debate from the comments which were the subject of **Allegation 1**. The comments were inflammatory and an expression of views which were extreme, threatening in nature and promoted violence towards individuals. The comments could not be dignified by the description of political expression.

3.2.3 That even if the Respondent was not aware of the status of his posts at the time of posting, despite the visible icon of a globe which showed that it was public, the Respondent was at the very least, reckless to that fact and the Tribunal found that on the balance of probabilities the Respondent was aware of their public status. He was well versed in the use of social media and sent regular and frequent posts and was reckless as to the consequences. In one of his posts not related to the Allegation, he had stated; "I will get another Facebook ban for saying it...". His responses to the written interview questions demonstrated that Respondent had little concern for whether his page was public or private.

3.2.4 The Case Tribunal considered that high profile politicians, by entering public life, lay themselves open to close scrutiny and indeed mockery and sarcasm. They were expected to possess thick skins and display a greater degree of tolerance than ordinary citizens, however such tolerance should not have to extend to personal, inflammatory and egregious comments which comprised of threats or inciting extreme violence and death from other politicians, albeit acting in their private capacity, including at a Community Councillor level. The comments were personal, disturbing and gratuitous verbal attacks, not political expression.

## **Allegation 2**

3.2.5 That the Respondent failed to comply with the Ombudsman's requests for information with regard to the change in his privacy settings. The Panel found that on the balance of probability, the Respondent's initial response that Facebook had confirmed that the settings had been private since 2013 was not a candid response and was written to attempt to minimise the nature and impact of the Facebook posts.

3.2.6 The Case Tribunal considered that the Respondent's subsequent responses contained a variety of excuses and no evidence or detail was forthcoming as to any relevant discussion with Facebook to confirm that the

Respondent's Facebook posts had been private since 2013. There was reference to a discussion with Facebook but the Respondent said that he had "got nowhere" in that instance. He then stated that he did not know how to check any change of settings that took place in 2013, although he was clearly an experienced user of Facebook and the Tribunal did not consider that this was an entirely candid response. Further to guidance supplied by the Ombudsman's Investigator, the Respondent failed to reply. Finally, in reply to written interview questions, the Respondent provided yet another explanation, stating that his settings had been "strangely changed" to public by a third party.

3.2.7 In conclusion the Panel considered that the Respondent had deliberately avoided providing information and full and frank responses to the reasonable requests of the Ombudsman's Investigating Officer in completing the investigation.

## **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

### **4.1 The Code of Conduct for Members**

4.1.1 The relevant parts of the Code are as follows;

#### **Allegation 1**

Paragraph 2(1)(d) of the Code states; "...You must observe this code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7."

Paragraph 6(1)(a) of the Code states; "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

#### **Allegation 2**

Paragraph 6(2) states; "You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers."

### **4.2 Article 10 ECHR Considerations in relation to Allegation 1**

4.2.1 Article 10 of the European Convention on Human Rights states as follows;

"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...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...”

4.2.2 The Case Tribunal adopted the following three-stage approach formulated in *Sanders v Kingston* [2005] EWHC 1145 in relation to **Allegation 1** and the three Facebook posts;

(i) Did the Respondent’s conduct breach Paragraph 6(1)(a) of the Code of Conduct?

(ii) Would the finding in itself comprise of a prima facie breach of Article 10?

(iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

### **4.3 Case Tribunal’s Decision – Allegation 1**

#### **Paragraph 6(1)(a) of the Code**

**4.3.1 On the basis of the findings of fact, the Case Tribunal found by unanimous decision that the Respondent failed to comply with Paragraph 6(1) of the Code for the following reasons;**

#### **Conduct within private capacity**

4.3.2 In accordance with Paragraph 2(1)(d) of the Code, Members must observe the Code at all times and in any capacity in respect of conduct which could reasonably be regarded as bringing a Councillor’s office or authority into disrepute and it therefore applied regardless of the fact that the Respondent was acting in his private capacity.

4.3.3 The Case Tribunal were mindful of the Ombudsman’s Guidance in this respect which states that;

- “...as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the code apply to you at all times.”

-It also refers to the significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter; “Even if you do not refer to your role as Councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

- “As a Member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on your Council.”

- "Inappropriate e-mails to constituents or posts on social media might well bring the office of member into disrepute".

4.3.4 The Case Tribunal was mindful of the case of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 which set out the very limited circumstances in which the relevant Code in would apply in England where a Member was acting in his private capacity. The position in Wales can be distinguished however, as the legislation has spelt out in clear terms what is covered by the Code in Wales. It extends unequivocally to conduct in private life in relevant circumstances. Section 52 of the Localism Act 2011 also omits reference to "in performing his duties" in Wales in relation to the undertaking to observe the Code which Members must sign.

4.3.5 The three Facebook posts in this case were all extreme and gratuitous in referring to violence or methods of killing in relation to three high-profile politicians. Even if the comments were glib, reckless or expressed to be part of perceived normalisation of such language on social media platforms, the Case Tribunal was satisfied that it was of a sufficiently serious nature that it could reasonably be regarded as bringing the Respondent's office and authority into disrepute;

(i) In relation to the Facebook post of 10 January 2019, the Respondent implies a wish that the subject of the post is hanged. He concedes that his comment was "a bit strong".

(ii) The post of 9 March again had no reasonable alternative reading. The Respondent was expressing a wish the subject of the post to be the subject of an atrocity.

(iii) The Respondent had argued that in relation to the 11 March post that the comment, "Get me a gun" was a reference to the Respondent turning a gun on himself. The Case Tribunal considered that this was an artificial construction of the plain meaning of the words in the context of the previous comment, that he wished to shoot the subject of the post.

4.3.6 The Respondent posted public comments on a frequent and regular basis which came to the attention of a member of the public and the Relevant Authority's Monitoring Officer and prompted a complaint in the light of the Respondent's public role as a Community Councillor. As an outspoken public figure, many in the community would have been aware that the Respondent was a Councillor and the three Facebook posts would have adversely reflected on both his role and his authority.

4.3.7 The Principles governing the conduct of elected and co-opted members of local authorities in Wales, which reflect and expand the "Nolan Principles" include the principles of "Integrity" and of "Leadership" whereby; "Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority". The Respondent's conduct had fallen well below the standards of conduct in public life which the Nolan Principles and the Code seek to uphold.

4.3.8 The Case Tribunal concluded that the three Facebook posts which are the subject of **Allegation 1** were so egregious, inflammatory and violent, that they offended against all notions of peace, safety, decency and democracy within society. In view of their extreme and public nature, the Case Tribunal had no difficulty in finding that the contents of the posts could reasonably be regarded as bringing the Respondent's office and also his authority into disrepute (quite apart from bringing the Respondent as an individual into disrepute).

#### **Article 10(1) ECHR**

4.3.9 Despite the finding that the Respondent breached Paragraph 6(1)(a) of the Code, the Case Tribunal nevertheless considered that the finding did comprise of a prima facie breach of Article 10 in that the finding could be deemed to restrict his right to freedom of expression.

#### **Article 10(2) ECHR**

4.3.10 The Case Tribunal were of the view that freedom of expression is a cornerstone of democracy and should not be readily displaced in any balancing exercise with competing rights of individuals, particularly of public figures who are expected to have "thick skin". The Case Tribunal gave extremely careful consideration to this issue, cognisant that anything which impeded political debate should be exercised with extreme caution.

4.3.11 As the Respondent's posts had been made in a private capacity and the Case Tribunal had found that they did not comprise of political expression, they did not attract the enhanced protection afforded to politicians. The Tribunal nevertheless concluded that even if enhanced protection had applied, the comments were so extreme and egregious, that the finding of a breach of the Code would nevertheless have been justified.

4.3.12 Article 10(2) makes it clear that the freedom of expression carries with it duties and responsibilities and may be subject to restrictions such as those contained in the Code (which are prescribed by law) and are necessary in a democratic society, in the interests of; "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."

4.3.13 The Case Tribunal noted that although the three Facebook posts which formed the subject of **Allegation 1** were made during the course of otherwise political exchanges, the comments themselves stood out as being quite distinct from that exchange and introduced a different and disturbing tone to the exchange.

4.3.14 As to the Respondent's argument that Facebook had its own code of conduct, the Case Tribunal stated that Member behaviour was governed by the statutory Code of Conduct by which Members had undertaken to abide and not by any procedure or code operated by a social media platform which may or may not identify threatening comments.

4.3.15 In conclusion, the three Facebook posts had been found by the Case Tribunal to be so extreme and egregious that, despite the fact that freedom of expression was a fundamental human right, there were necessary limits. The posts went well beyond what could be reasonably tolerated in a democratic society. It was necessary for the public interest in proper standards of conduct by Members of local authorities to be upheld by a finding that the Respondent had breached Paragraph 6(1)(a) of the Code, in order to safeguard public safety and the reputation and rights of others.

#### **4.4 Case Tribunal's Decision – Allegation 2**

##### **Paragraph 6(2) of the Code**

**4.4.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that the Respondent had failed to comply with Paragraph 6(2) of the Code for the following reasons;**

4.4.2 The Case Tribunal had reached the finding of fact that the Respondent had deliberately avoided answering the Ombudsman's reasonable requests in his Investigating Officer's efforts to complete the investigation in accordance with the Ombudsman's statutory powers.

4.4.3 It inevitably followed that there had therefore been a breach of Paragraph 6(2) of the Code.

#### **5. FINDINGS IN RELATION TO SANCTION**

**5.1 The Case Tribunal considered all the facts of the case and concluded by unanimous decision that the Respondent should be disqualified for 15 months from being or becoming a member of Sully and Lavernock Community Council or of any other relevant authority within the meaning of the Local Government Act 2000 for the following reasons;**

5.2. The Case Tribunal carefully considered the current Sanctions Guidance of the Adjudication Panel for Wales in particular and noted the public interest considerations as follows in paragraph 44;

- "The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.

5.3 The Case Tribunal also considered paragraph 47 of the Guidance with regard to former Councillors which reads as follows;

- “In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...”

5.4 The Case Tribunal considered that the facts leading to breach of the Code in relation to **Allegation 1** were particularly serious and were of the view that if the Respondent had not resigned and remained in office, it would not have considered that suspension was a sufficient sanction to recognise the extremely serious nature of the breach.

5.5 The Case Tribunal had regard to sanctions imposed in previous cases. It was also mindful that the comments were directed at individuals who were national political figures, rather than officers of the Relevant Authority or members of the local community. The public figures would be unlikely to become aware of, or be directly affected by, the comments directed at them. The Case Tribunal nevertheless considered that as this was an extremely serious breach, the sanction was proportionate in all the circumstances.

5.6 In conclusion, the Case Tribunal considered that the Sanction imposed was the minimum necessary to uphold the standards of conduct in public life and maintain confidence in local democracy. It reflected the fact that the behaviour demonstrated that the Respondent was unfit for public office and required a significant period of time in order to reflect on his conduct before contemplating re-entering local politics.

5.7 With regard to **Allegation 2**, the Case Tribunal considered that the lack of full co-operation and compliance with the Ombudsman’s requests during investigation and lack of candour was a matter of concern, however it did not consider that a separate penalty should be imposed in relation to this breach.

5.8 The Case Tribunal came to the above conclusion having considered the following Mitigating and Aggravating factors which are highlighted in the Sanctions Guidance.

#### **Mitigating Factors;**

5.9 The Case Tribunal noted that the Respondent had a relatively short length of service and would have been inexperienced in the role of Community Councillor. There had been no record of a previous breach during this short period of service. The Respondent expressed a minimal amount of regret, for example by referring to his post of 10 January 2019 as “a bit strong”.

#### **Aggravating Factors;**

5.10 The Case Tribunal noted that the Respondent’s conduct was blatant and largely unapologetic. He stood by his comments although he regretted that his comments had been public. The behaviour was deliberate, reckless and

repeated and there appeared to be little or no concern for the Code and a lack of understanding or acceptance of the misconduct and any consequences.

5.11 In conclusion, the Case Tribunal found that the three Facebook posts consisted of the expression of views which were not worthy of respect in a democratic society, and were incompatible with human dignity and conflicted with the fundamental rights of others.

## **5.12 Article 10 ECHR Considerations**

5.12.1 The Case Tribunal recognised that the sanction comprised of a prima facie breach of Article 10 in that the finding could be deemed to restrict the Respondent's right to freedom of expression.

5.12.2 It considered however that the sanction of disqualification was a penalty prescribed by law and was of a length which was proportionate bearing in mind the interests of public safety and the need in a democratic society to prevent disorder or crime, for the protection of health or morals and for the protection of the reputation or rights of others in a democratic society.

5.12.3 The Case Tribunal recognised that disqualification would breach the Respondent's Article 10 rights. It was satisfied however that disqualification for 15 months was the minimum necessary to recognise the seriousness of the Respondent's breach of the Code. The sanction was necessary in this case in order to maintain the integrity of the Nolan principles as extended in the Welsh context as well as the Code of Conduct for Members, but also to protect others from gratuitous, offensive personal comment and 'hate speech' and to protect the health, safety and rights of others.

5.13 Sully and Lavernock Community Council and its Standards Committee is notified accordingly.

5.14 The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

Signed



Date 12/01/2021

C Jones  
Chairperson of the Case Tribunal

S Hurds  
Panel Member

G Jones  
Panel Member

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/001/2020/CT

**REFERENCE IN RELATION TO A POSSIBLE FAILURE TO FOLLOW THE CODE OF CONDUCT**

**RESPONDENT:** Councillor Kevin O'Neill

**RELEVANT AUTHORITY:** Merthyr Tydfil Borough Council

**1. INTRODUCTION**

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 In accordance with Councillor O'Neill's request, and in accordance with regulation 15(1)(a) of The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, and upon being satisfied that it was in the interests of justice to do so, the Case Tribunal determined its adjudication by way of written representations at a meeting on 18<sup>th</sup> and 22<sup>nd</sup> December 2020 held by Cloud Video Platform (CVP), but as if meeting at the tribunal's offices.

1.3 Councillor O'Neill was represented by Capital Law solicitors who made written representations and submission on his behalf. The tribunal received written representations and submissions from Katrin Shaw, Chief Legal Adviser and Director of Investigations on behalf of the Public Services Ombudsman for Wales.

1.4 References in square brackets within this Decision Report are to pages within the bundle of Tribunal case papers unless otherwise stated.

**2. PRELIMINARY DOCUMENTS**

**2.1 Reference from the Public Services Ombudsman for Wales**

2.1. In a letter dated 13<sup>th</sup> July 2020 the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales ("the Ombudsman") in relation to allegations made against Councillor Kevin O'Neill ("the Respondent"). The allegations were that Councillor O'Neill had breached Merthyr Tydfil Borough Council's Code of Conduct ("the Code") in August 2018 in relation to a personal

and prejudicial interest, and in his treatment of the former Chief Executive of the Relevant Authority at a meeting on 5<sup>th</sup> March 2019, contrary to paragraphs 4(b), 6(1)(a), 11(1), 11(2)(a), 14(1)(a), 14(1) (c), 14(1)(d) and 14(1)(e) of the Code.

## **2.2 The alleged breaches of the Code**

The six alleged failures under consideration were as follows;

### **2.2.1 Allegation 1**

Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15<sup>th</sup> August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.

### **2.2.2 Allegation 2**

Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15<sup>th</sup> August 2018.

### **2.2.3 Allegation 3**

Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15<sup>th</sup> August 2018.

### **2.2.4 Allegation 4**

That the Respondent's email to the Director of Social Services on 16<sup>th</sup> August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the email sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.

### **2.2.5 Allegation 5**

Whether the Respondent's actions in speaking at the meeting of the 15<sup>th</sup> August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16<sup>th</sup> August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.

### **2.2.6 Allegation 6**



Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5<sup>th</sup> March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.

## **2.3 The Councillor's responses to the investigation and Reference**

2.3.1 Councillor O'Neill responded to the Ombudsman's investigation and reference to the Adjudication Panel for Wales upon a number of different occasions. He was first written to by the Ombudsman on 30<sup>th</sup> April 2019 in relation to the investigation. On 11 March 2020 Councillor O'Neill was interviewed by Annie Ginwalla, Investigation Improvement Officer, and by Leigh McAndrew, Investigating Officer, at the authority's offices. The interview was recorded and a transcript appears at section B pages 382 – 555 of the bundle. During the interview Councillor O'Neill accepted that he had a personal interest in the property in Luther Lane but denied that he had a prejudicial interest. In relation to the meeting with the former Chief Executive and his conduct and behaviour towards him, Councillor O'Neill considered that he had not breached the Code.

2.3.2 The Respondent provided his undated written comments on the draft of the Ombudsman's report [Appendix 23 to the Ombudsman's Report, B591-597].

2.3.3 The Respondent, through his solicitors, wrote to the APW on 14<sup>th</sup> August 2020 [pages C.2-25] on the Response to the Ombudsman's report form (APW01) dated 13<sup>th</sup> of August 2020, in which, amongst other things, (the description below is not intended to be exhaustive), he;

- a. Disputed that he had sought to influence a decision at the meeting on 15 August 2020
- b. Disputed that he had failed to show respect and consideration to the former Chief Executive,
- c. Asserted that he heeded the Monitoring Officer's advice in relation to the meetings on 15 August 2018 and that he recognised the need to "stand back", but he did not recall any legal language regarding a 'prejudicial interest' being used.
- d. Said that in relation to the email he sent on 16 August 2018 to Lisa Curtis Jones, the Director of Social Services, that she had been present at the two meetings the previous day and was well aware of his position as a resident.
- e. Stated that in relation to the thirteen occasions when he spoke at the meeting on 15 August 2018, that the majority of these occasions were minor/completely innocuous statements/questions.
- f. Disputed that he had breached the following provisions of the Code; 4(b), 6(1)(a), 11(1), (11(2)(a), 14(1) (c), (d) and (e).

2.3.4 Councillor O'Neill also submitted an additional witness statement dated 13<sup>th</sup> August 2020 in which he said "*It is only from this investigation process and specific mentoring since the events that I understand what the phrase 'prejudicial interest' means and when it is relevant. If I found myself in a similar situation in the future, then I would certainly replace the term 'compromised' with the more*

*legal phrase ‘prejudicial interest’ and quote it at every appropriate opportunity should similar situations arise.”*

2.3.5 On 6<sup>th</sup> November 2020 the Tribunal’s listing direction was sent out inviting further submissions in the light of the case being decided upon the papers. The Respondent’s solicitors accordingly sent in further submissions dated 27<sup>th</sup> November 2020, and 9<sup>th</sup> December 2020.

## **2.4 The Ombudsman’s Written Representations**

2.4.1 By letter of 27<sup>th</sup> August 2020, the Ombudsman sent in form APW18 and responded to Councillor O’Neill’s written representations in his Response to the Ombudsman’s Report form. Following the listing direction being sent out, the Ombudsman provided further written representations on 27<sup>th</sup> November 2020 and 9<sup>th</sup> December 2020.

## **3. FINDINGS OF FACT**

3.1 The Case Tribunal found the following **undisputed** material facts:

3.1.1 The Respondent is a Councillor and the current Leader at Merthyr Tydfil County Borough Council (“the Council”). He was first elected to the Council in May 2017 and has been Leader of the Council from June 2017 until the present.

3.1.2 The Respondent received training on the Council’s Code of Conduct for Members in 2017 and signed an undertaking to observe the Code on 10th May 2017.

3.1.3 The relationship between the Respondent and the former Chief Executive, Mr Gareth Chapman, was strained and poor.

3.1.4 The Respondent had a personal interest in a matter affecting St David’s, Luther Lane, Merthyr Tydfil, a property neighbouring his home which was purchased by a private organisation with the intention of housing children from troubled backgrounds in a community setting.

3.1.5 The Respondent was present at two meetings to discuss the Luther Lane property on 15th August 2018, the first a pre-meeting with Council staff, the second an inter-agency meeting.

3.1.6 The Respondent sent an e mail on 16th August 2018 to the Director of Social Services following up on issues of concern to him arising from the inter-agency meeting on 15th August 2018 at which the Director had been present, and the Respondent did not include any declaration in that e mail of his personal or prejudicial interest in the matter of the Luther Lane property.

3.1.7 The Respondent did not give the former Chief Executive, the former Deputy Chief Executive or the Monitoring Officer, any indication that he intended to raise the former Chief Executive’s performance at the meeting on the 5th March 2019.

3.1.8 The Respondent, when concerned about the performance of the former Chief Executive, did not follow the Member Code of Conduct Protocol for Merthyr Tydfil Borough Council paragraph 2.8, in the manner in which he raised his concerns at the meeting of 5th March 2019.

3.2 The Case Tribunal found the following **disputed** material facts:

3.2.1 The Respondent had a prejudicial interest in the proposed development of St. Davids, Luther Lane, Merthyr Tydfil.

3.2.2 The Monitoring Officer advised the Respondent in August 2018 that he had a very clear prejudicial interest in the matter of the property, St Davids, Luther Lane and that he should not front any type of focus or lobbying group or be involved with this.

3.2.3 The Monitoring Officer advised the Respondent that he should not attend at the meetings on 15<sup>th</sup> August 2018. When the Respondent made it clear that he was going to attend, the Monitoring Officer advised that upon that basis, he should not contribute to the discussion at the meeting and only be a facilitator.

3.2.4 The Monitoring Officer gave her advice as per 3.2.2 and 3.2.3 above, orally to the Respondent on a date in August 2018 that has not been recorded, but that was before the meetings of the 15<sup>th</sup> August 2018.

3.2.5 At the inter-agency meeting of the 15<sup>th</sup> August 2018, the Respondent was an active participant and his role went beyond that of merely a facilitator.

3.2.6 The Respondent did make comments at the inter-agency meeting on 15<sup>th</sup> August 2018 that were capable of influencing others present and any decision associated with it.

3.2.7 The Respondent's conduct towards the former Chief Executive at the meeting of the 5<sup>th</sup> March 2019 failed to show respect and consideration to the former Chief Executive.

3.3 **The Case Tribunal found the following in respect of the disputed facts:**

3.3.1 Before considering the disputed facts and the case tribunal's findings in more detail, it is emphasised that since this hearing was determined on the papers at the Respondent's request, the tribunal carefully considered the totality of the written evidence contained in the hearing bundle, and decided matters based on that evidence on the balance of probabilities. The Respondent had the benefit of legal advice in asking for a paper determination, aware that the effect of this request would be to prevent him from appearing in person to put forward his case and to cross-examine other witnesses, and that the case tribunal would accordingly assess the facts on the basis of the documentary evidence.

**3.3.2 The Respondent had a prejudicial interest in the proposed development of St. Davids, Luther Lane, Merthyr Tydfil.**

3.3.3 Paragraph 12 of the Code describes prejudicial interests and says at 12(1); *“Subject to sub-paragraph (2) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.”* The exemptions in 12(2)(a) do not apply here and neither party sought to argue that they did.

3.3.4 The Respondent has always accepted that he had a personal interest in the proposed development of St Davids, Luther Lane. Personal Interests are defined at paragraph 10 (2) of the Code, which says;

*“You must regard yourself as having a personal interest in any business of your authority if –*

*(a) it relates to, or is likely to affect- .....*

*(vi) any land in which you have a beneficial interest and which is in the area of your authority; and;*

*(c) A decision upon it might reasonably be regarded as affecting –*

*(i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;”*

3.3.5 The Respondent lives at Luther Lane, Merthyr Tydfil. The Ombudsman’s Report of 13<sup>th</sup> July 2020 sets out the factual position in 2018 as follows;

*“23. In August, Councillor Hughes and the Deputy Chief Executive were advised by the Director of Social Services that a property entitled ‘St David’s’, at Luther Lane, Twynyrhodyn had been purchased by an independent company, Inspire & Support, to provide residential accommodation for young children living away from their families. Inspire & Support had made an application to the Council’s planning department for a change of use associated with the property.*

*24. Councillor O’Neill lives at ..... the property situated directly next door, to the right of St Davids. Councillor Hughes informed Councillor O’Neill about the application.”*

3.3.6 The Respondent argues that there was no Council decision here for the purposes of the complaint and that the reference to “change of use” was a straightforward disability adjustment to the front access of the property, and that there was no policy/decision in motion when the Respondent became aware of the Inspire proposal [C8]. This position is repeated in the Respondent’s submissions of 27<sup>th</sup> November 2020, (albeit when dealing with whether there has been a failure to comply with the Code), but it is also relevant to the Case Tribunal’s factual consideration here.

3.3.7 The Respondent says that he did not have a prejudicial interest and *“.... It is significant here that there was no Council decision to be made in connection with the Luther Lane property. There was no judgement to be applied by C’ON, or any other Councillor or official. It is submitted that where there is no official outcome to affect (one which involves considerations of or assessments of the public interest in that context), the question of prejudice is almost moot (or at least the prospect of prejudice to an ordinary person must be more remote). In any*

event, the “ordinary person” test is not met. Based on the backdrop and context as explained in this submission and in the APW01, the Respondent submits that the ordinary informed member of the public would not consider that the Respondent had a prejudicial interest in any matter where the Council had no decision or remit.” [Bundle Further Submissions 75].

3.3.8 The Ombudsman Asserts that in the context of the meeting of 15 August 2018, “it is irrelevant that the parties at the meeting were not required to make any ‘decisions’ associated with the development/property at that meeting.” In submissions made on 9<sup>th</sup> December 2020, the Ombudsman addresses the question of whether there was any decision pending which was capable of being influenced by the Respondent. The Ombudsman notes that this was not a point taken by the Respondent at the time or during interview, rather that the Respondent’s stance was that, given the political significance of the proposed Inspire and Support home within his ward, the outcry in the press, social media and more generally, when the proposal became public knowledge, he had little choice other than to become involved, and consciously chose to become involved despite the advice of the Monitoring Officer.[Bundle Further submissions page 94].

3.3.9 The Ombudsman’s report concludes that the Respondent’s personal interest in the proposed development of St Davids, Luther Lane, was also prejudicial. The Ombudsman says at paragraph 130 of his report [Bundle B page 40]

*“The relevant facts that the objective and reasonable observer would consider would, in my view, include matters such as the proximity of the property to his home (although detached, the property is directly next door) and the nature of the proposed use; Councillor O’Neill confirmed that, when he became aware of the application, he was advised that its use was for ‘troubled teens’. Councillor O’Neill also advised of his wife’s immediate reaction, based on the suitability of the location. Additional relevant facts would include the strength and significant feelings displayed by the community and feelings of suspicion and concern displayed by elected members, including Councillor O’Neill, that officers in the Council had not brought this issue to their attention sooner.”*

The Ombudsman adds at paragraph 132 of his report;

*“Further, at interview, Councillor O’Neill said that members of the public have commented about his ability to get the development ‘stopped’ in his Street, when seeking his help on another unrelated matter, thus suggesting that they have the impression that his involvement had, at the very least, the potential to have been influential.”*

3.3.10 The case tribunal notes that in his complaint to the Ombudsman of 1<sup>st</sup> April 2019, Mr Gareth Chapman, the former Chief Executive, upon his return from leave in August 2018, discussed the Luther Lane matter with the Respondent and

says that, in such discussion, “*The Leader focused upon assertions that the home would be used by “drug addicts, sex offenders etc” and he failed to recognise the actual proposed use of the property for children/young people in the care setting, each of whom have differing needs and requirements but most importantly, all need a stable home and support environment.....I advised the Leader that in my opinion this was a classic case of “nimbyism” and would have grave consequences.*” [Bundle B1b pages 76 and 77].

3.3.11 Mr Chapman confirms this in his witness statement of 2<sup>nd</sup> October 2019 provided to the Ombudsman, at paragraph 29 where he says “*On my return from leave I became aware that there had been a huge social media campaign about the application suggesting that the property would be filled with criminals, drug users, sex offenders etc. I was informed placards/posters had been displayed in Councillor O’Neill’s windows at home. The publicity surrounding this issue was extremely negative and was advised [sic] completely misrepresented the plans for the facility. The publicity led in some ways to a bit of a witch hunt as I understand other members of the Independent Group began asking for the location of other properties of this kind in the County which is totally inappropriate in my view.*” Mr Chapman says that he attempted to speak to the Respondent about it after returning from leave; “*I mentioned that I had been made aware of the issue. He appeared reluctant to talk about it I advised him that I felt he had a personal and prejudicial issue in this matter, he should not have been involved in any discussions or meetings relating to it. I told him that it was, in my view, the worst case of nimbyism I had seen.*” [Bundle B1h page 213].

3.3.12 The Case tribunal note that in his interview Councillor O’Neill talks about the St David’s building and describes it as ‘*right next door*’, ‘*absolutely next door*’ [B.2L page 408], and ‘*our fence is, it’s about three foot from the building next door.*’ He described how his wife was ‘*absolutely lambasted on social media*’ for comments that she had made. [B2.L 414] He said “*... What happened was, is that my wife then, when I was out went and put a sign up, no hostel here.... I didn’t have any involvement with it, and clearly, later on we took it down. It caused a major storm, on Facebook all this stuff kicked off.*” [B2.L page 414] he described how members of the community came to his home and he was saying ‘*look, I can’t get involved*’. He said “*Well, it was really difficult. Um, because, because you know, we’ve invested, like every else [sic] invested a lot of money, er, in the house and it, it wasn’t based around the fact that you would have that interface, I mean linked with tho...those properties is the social workers, the police attendance, all that. I mean it’s a really busy road as it is I don’t think it accommodated where it is anyway,*” [B2.L page 415].

3.3.13 The Respondent then describes that, with another councillor, David Hughes, he arranged for a meeting to see all the active partners to see ‘*where this came from*’. He describes opening the meeting and said that because he lived next door he was stepping back, that the police were at the meeting and they were very concerned about the process. [B2.L416].

3.3.14 On 15<sup>th</sup> August 2018 there were two meetings that were held at the authority's offices. For the purpose of clarity throughout this decision, the first meeting will be described as the pre-meeting. This was a meeting at which the Respondent spoke with other members of the authority before hosting the meeting at which third parties such as representatives of Inspire and Support and the police were present. This will be described as 'the inter-agency meeting' of 15th August.

3.3.15 The tribunal note that under the Code, Part 1, Interpretation, "meeting" means "**any meeting**" of the relevant authority, executive or board, of any committee, sub-committee etc and "(d) **where members or officers of the relevant authority are present other than a meeting of a political group constituted in accordance with regulation 8 of the Local Government (Committees and Political Groups) Regulations 1990, and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority.**" It is clear therefore that a meeting that attracts the requirements to observe the Code is one where members or officers are present. Voting or formal decision making is not required to bring a 'meeting' within the Code.

3.3.16 Part 2 of the Code, General Provisions, says that members **must** observe this code of conduct "**2(a) whenever you conduct the business, or are present at a meeting of your authority**". It is clear that the conducting of business is disjunctive from being present at a meeting. It is an obvious point but one that is nevertheless made in the Code, that a member does not need to be in a meeting to be conducting the business of the authority.

3.3.17 The Respondent says that he, together with Councillor Hughes, arranged the pre-meeting and the inter-agency meetings on the 15<sup>th</sup> August 2018. The meetings were held at Council property and the inter-agency meeting was attended by representatives of the police force, Inspire and Support and 4Cs Regional Commissioning Manager. Lisa Curtis Jones, the Director of Social Services for the authority says in her statement at paragraph 5, of the pre-meeting, [B.2f page 339] "*I attended as Director of Social Services. Prior to the meeting we had a pre-meeting sit down with Councillor O'Neill and everyone except the representatives from Inspire and Support. The purpose was to pre consult ahead of meeting. Much of the discussion focused on the placement strategy, the needs we as the Council had for young people and we discussed the history of the company coming to the area.*"

3.3.18 The former Deputy Chief Executive (now the current Chief Executive) Ellis Cooper, in his statement dated 8<sup>th</sup> October 2019 says, paragraph 3, that "In August 2018 I was party to meetings that were held relating to a situation involving an application made by a care home provider to create a facility for vulnerable young adults in the County." [B.1i page 249]. He adds, of the inter-agency meeting; "*The meeting was arranged to enable discussion relating to concerns that had been raised by the members and the public via a social media campaign and meet the provider. This meeting was not open to the public.*"

*Councillor O'Neill was hosting the meeting but was in an awkward position because the property was next door to his home. Because he had a direct interest in this matter, I believe he made a statement at the start of the meeting to the effect that he was hosting the meeting and not participating.*" [B1i. Page 250, paragraph 4]. Minutes were taken of the interagency meeting which were exhibited to Mr Cooper's statement. [B1i pages 254-261]

3.3.19 The tribunal find that both meetings on the 15<sup>th</sup> August 2018, on council premises, involving Council members and staff, were conducting the business of the authority and were meetings of the authority within the meaning of the Code. The fact that there was a pre-meeting showed the importance of the meeting in that the Council felt that they needed to discuss where they were going with this, and their strategy. The pre-meeting was in the Respondent's office, the inter-agency meeting was held in a meeting room of the authority. During the inter-agency meeting itself, the Respondent said that there should have been political oversight of these issues from the former Chief Executive [B1i page 257]. The tribunal agrees with the submission of the Ombudsman that there does not need to be a decision made at the meetings of 15<sup>th</sup> August for there to be a prejudicial interest. The tribunal is satisfied on the balance of probabilities, taking the foregoing matters into account that the personal interest that the Respondent had in the business of the authority in relation to St Davids, Luther Lane, was one that a member of the public with knowledge of the relevant facts would regard as so significant that it is likely to prejudice the Respondent's judgement of the public interest.

3.3.20 The tribunal in deciding as a fact that the Respondent had a prejudicial interest endorses the words of the Ombudsman's Chief Legal Adviser in the representations of 9<sup>th</sup> December 2020 "*The factual context speaks for itself. Inspire & Support were proposing to operate a home for children potentially with behavioural difficulties next door to the Respondent's home. It is difficult to imagine a factual scenario existence of a prejudicial interest ought to have been more obvious. The potential for characterisation of the Respondent as a NIMBY really ought to have been entirely clear. Certainly, a member of the public with knowledge of the relevant facts would reasonably regard the fact that the Respondent and his family lived next door to this proposed home as a factor likely to prejudice the Respondent's judgement of the public interest. The potential for the location of the Inspire & Support home to have a detrimental effect on house value within its vicinity is a factor which suggests a possible financial interest.*" [Bundle Further Submissions page 97]. The tribunal notes that this representation was made in relation to the second stage but it is of equal relevance to the factual determination of the prejudicial interest. There is a congruence between the tribunal's finding of fact that there was a prejudicial interest and the tribunal's view on whether as a matter of law there was a prejudicial interest.

**3.4.1 The Monitoring Officer advised the Respondent in August 2018 that he had a very clear prejudicial interest in the matter of the property, St**



**Dauids, Luther Lane and that he should not front any type of focus or lobbying group or be involved with this.**

3.4.2 The Monitoring Officer, Carys Kennedy, says in her statement *“I first became involved in this matter when Ellis Cooper, the then Deputy Chief Executive, and I were asked to see him and advise as to the extent to which he could become involved in this. I advised him that, whatever the Independent Group’s views were and the agreed stance was, he had a very clear prejudicial interest in the matter. I tried to make it very clear that because of his interest he could not front any type of focus or lobbying group or be involved in this. He told Ellis and I that he would be representing the views of people in the community who viewed him as a figure head and were approaching him for help over this. He said that he felt it was impossible for him to back away because of the people coming to him. Nevertheless, our clear and strong advice to him was that he should do so and that he should refer people on to his fellow ward member. He was told that he should not be the person leading this issue on behalf of the public. He appeared to me to be very caught up in what seemed to be considerable public disquiet about it. The issue was, in my opinion, being driven out of proportion by a social media frenzy. A series of wholly inappropriate and derogatory comments was being made on social media about the type of people who might occupy the type of property and types of public action which would be taken if these people lived there. In effect it turned into what I would describe as a “witch-hunt”. I very much doubt that any young person living in that property after that would have been safe. This was an enormously volatile situation. It escalated to an extent that the adverse publicity led to a call from the public and other Councillors to identify the location of any other properties in the County used for this purpose. The response generated was a real cause for concern. Councillor O’Neill indicated during our discussions that he felt he had to find a way out of this and that his Cabinet, and not officers, should be the people seen to resolve this problem.”* [B.1j paragraph 7 pages 266/267].

3.4.3 In interview, the Respondent accepted that the Monitoring Officer had said this to him [top of page 422, B.2L] when asked if he recalled receiving that advice he said “I think so”, and although he then expresses doubts and says that his recollection is normally very clear, he then says *“...it sounds like a bit of conflict about me being there”* and shortly afterwards he says *“... I mean, some of the things is with these conversations, er, that I had with er, Carys and others; **if I hadn’t had that conversation with Carys, maybe I would have been a bit more vocal. Maybe I would have got involved in it more. But she... I listened to her advice and her counsel, I thought, yeah, yeah, I really need to stand back here. But I was still convinced I should have been there.**”* [page 423 B.2L] [our emphasis].

3.4.4 The Respondent says in his response to the APW of 13<sup>th</sup> August 2020, that the precise communication between him and the Monitoring Officer is disputed and that his position is that he heeded the Monitoring Officer’s advice and recognised the need ‘to stand back’ but does not recall any legal language regarding a ‘prejudicial interest’ being used. He says that the accounts of Councillors Hughes and Barry, of Ellis Cooper and Lisa Curtis Jones are more closely aligned with his account than the Monitoring Officer’s. [ Bundle section C pages 8/9].

3.4.5 The Ombudsman points out that the date of the meeting between the Respondent and the Monitoring Officer is unclear but that neither party has suggested that it took place at the pre-meeting in the presence of other people, and that the Monitoring Officer's statement suggests that her advice was given in the presence of Ellis Cooper which was not disputed during the investigation. The Ombudsman also noted that the Respondent has questioned the Monitoring Officer's independent status as he asserted that she had a close relationship with the former chief Executive but found that there was no evidence to justify his concerns.

3.4.6 The tribunal, on the balance of probabilities accepts the account given by the Monitoring Officer in her statement. It is clear from the interview that the Respondent accepts that he was given advice by the Monitoring Officer and equally clear that he cannot, on his own account, fully recall that advice. The Monitoring Officer is clear on what she told the Respondent, that she felt that there was a very clear prejudicial interest, and there is no reason to doubt her account. The statements that the Respondent says are more consistent with his account (from Councillors Hughes and Barry, Mr Cooper, and Lisa Curtis Jones) do not assist him with regard to the Monitoring Officer's advice. In fact, Councillor Hughes in his second statement says that the former Chief Executive was at the meeting [B.3e page 730 paragraph 3] and raises concerns about the impartiality of the Monitoring Officer [B.3e. Page 731 paragraph 8]. The former Chief Executive Mr Chapman was not at the meetings on 15<sup>th</sup> August as he was on holiday, which casts doubt on the reliability of Councillor Hughes' evidence. Likewise, there is no evidence to support Councillor Hughes' questioning of the Monitoring Officer's impartiality.

3.4.7 The case tribunal further note that the Respondent in his interview as noted above, "was still convinced I should have been there". This is consistent with him having been given advice that he should not have been there but deciding for himself that he should be.

**3.5. The Monitoring Officer advised the Respondent that he should not attend at the meetings on 15<sup>th</sup> August 2018. When the Respondent made it clear that he was going to attend, the Monitoring Officer advised that upon that basis, he should not contribute to the meeting and only be a facilitator.**

3.5.1 In addition to the Monitoring Officer's evidence recorded at paragraph 3.4.2 above, she further says "*We agreed that a meeting should be arranged as a way forward but I was clear that I felt that he shouldn't be at the meeting. He took the view that he should be there, that it would be a falsehood to suggest that he was not involved. He expressed the view that **because he was so involved the public saw it as something he should resolve** and so he had to be there. **On this basis I gave him advice that if he had to be there he should not contribute to the meeting.** I believe the phrase used was that he should just be the facilitator of the meeting. Going into the meeting I understood that this was going to be the extent of his involvement."* [Our emphases]. [Bundle B.1] page 26 paragraph 8].

3.5.2 As noted, the Respondent's position is *"that he heeded [the Monitoring Officers] advice and recognised the need to "stand back" [Bundle C, page 9.]* Further his comments in interview, recorded and highlighted at paragraph 3.4.3 above, clearly demonstrate that he had had a conversation with the Monitoring Officer and that if he had not had that conversation with her, that *"Maybe I would have been a bit more vocal. Maybe I would have got involved in it more."* [ Bundle B.2L page 423]. He had earlier said in his interview *"Because the other thing I said, is there are a lot of things I can bring to the table and nobody else can. Because I've spoken to people and people have come to me. But I said 'I have to be there', again as a ward councillor, that's what I felt, in a sense. But I... again, I opened the meeting and sat back."* [Bundle B.2L page 422].

3.5.3 During the Respondent's interview, the Interviewing officer Annie Ginwalla, talking about the inter-agency meeting of 15th August 2018, and noting that there were comments attributable to the Respondent at the meeting says *"So my next question is, obviously you'd had Carys's advice beforehand, saying sit there but don't, don't contribute in any way. Why did you think it was appropriate to contribute? Particularly as you said, that you were there too, to hear about the genesis."* The Respondent does not take issue with or contradict the statement in the question about having received that advice, but replies with an answer about the minutes of the meeting not always presenting the actual detail of the conversations. He says that he was surprised how little he did contribute which was very difficult for him. [Bundle, B.2 L Page 437]. He further adds that he was going to be left to deal with the fallout of the situation *"So I wanted to be clear of that information. I don't think I was going against Carys's advice."* [Bundle B.2L page 438].

3.5.4 The tribunal, on the evidence, accept the account given by the Monitoring Officer and that her advice was that the Respondent should not be at the meeting(s) at all, but that once the Respondent made it clear that he felt that he should be there, the Monitoring Officer then advised that if he had to be there then he should not contribute and should be the facilitator only. The accounts of the Respondent and the Monitoring Officer are consistent on this as noted in the extracts from the evidence and interview in the preceding paragraphs. The tribunal accept that the Monitoring Officer had advised that the Respondent had a prejudicial interest in the matter of St David's, Luther Lane.

**3.6. The Monitoring Officer gave her advice to the Respondent as per 3.4.1 and 3.5.1 above, orally to the Respondent on a date in August 2018 that has not been recorded, but that was before the meetings of the 15<sup>th</sup> August 2018.**

3.6.1 The Ombudsman points out that the date of the meeting between the Respondent and the Monitoring Officer is unclear but that neither of them suggested that this discussion took place during the pre-meeting on 15 August in the presence of others, and that the statement of the Monitoring Officer suggests that the meeting was arranged following her advice. The Monitoring Officer's statement suggests that her advice was given in the presence of the former Deputy Chief Executive Mr Cooper. This was not disputed by the Respondent during the Ombudsman's investigation. [Bundle D.1 page 6]. This

is not confirmed or denied by Mr Cooper in his statement, who makes no comment on the matter.

3.6.2 The Respondent suggests that the discussion between the monitoring officer and himself was witnessed by five others at the pre-meeting [Bundle C.1 page 8 and 9] and refers to the witness statements of Councillors Hughes and Barry, the former Deputy Chief Executive, and Lisa Curtis Jones. However, none of these statements contain evidence of the discussion between the Monitoring Officer and the Respondent and any advice given to him.

3.6.3 The tribunal was surprised to note that the Monitoring Officer did not record her advice in writing either contemporaneously or immediately after the meeting that she had with the Respondent, when she gave him the advice about prejudicial interests and not to attend at the meeting as found above. It cannot be said with certainty, upon the evidence presented by both parties, the date and time of the meeting when this advice was given, but it was at some point before the meetings of 15th August 2018.

**3.7 At the inter-agency meeting of the 15<sup>th</sup> August 2018, the Respondent was an active participant and his role went beyond that of merely a facilitator.**

3.7.1 The Ombudsman's report says that the minutes of the inter-agency meeting demonstrate that the Respondent opened the meeting, went on to ask for an explanation of the 'acquisition' of the property, commented that he should have had 'oversight' of the proposal and work with the Council, and spoke of his concerns about speaking to the public afterwards. The Ombudsman notes that the evidence received from the majority of those present is also suggestive that the Respondent was an active participant during the meeting, albeit that many recognise his involvement may have been more limited than usual. The minutes of the meeting record that the Respondent spoke on at least thirteen occasions whereas Councillor Barry spoke twenty-four times and Councillor Hughes the then cabinet member for Social Services, spoke four times. [Bundle B1a page 42, paragraphs 137-139].

3.7.2 The Ombudsman concluded that, based upon the evidence from those present at the meeting and the minutes themselves, that he was satisfied that the Respondent spoke and contributed to the inter-agency meeting beyond the role of a facilitator. [Bundle B1a page 42 paragraph 141].

3.7.3 The Respondent submitted that him speaking on thirteen occasions during the meeting must be considered in the context of the meeting as a whole. The majority of these thirteen occasions were minor/completely innocuous statements/questions and a significant number of the interventions related to his "compromised" position. It is submitted that his contributions must be read against the global, qualitative contributions of all attendees and that a simple quantitative analysis is not relevant or possible. [Bundle C.1 page 11].

3.7.4 The statement of Ellis Cooper of 8<sup>th</sup> October 2019 stated that "*Councillor O'Neill was hosting the meeting but was in an awkward position because the property was next door to his home. Because he had a direct interest in this*

*matter, I believe he made a statement at the start of the meeting to the effect that he was hosting the meeting only and would not be participating. I can't recall Councillor O'Neill's exact words, but he indicated that he would be taking a back seat and others would take a lead because of this interest..... I think Councillor O'Neill may have gone on to participate in the meeting by asking questions albeit to a lesser extent."* [Bundle B.1i, page 250, paragraph 4]. Mr Cooper exhibited the minutes from the inter-agency meeting to his statement [Bundle B.1i pages 254- 261].

3.7.5 The Monitoring Officer Carys Kennedy said of the inter-agency meeting; *"This was a formal meeting; it was not open to the public and all Councillors in attendance were there in an official capacity. I do not recall hearing Councillor O'Neill declare a personal and/or prejudicial interest at the start of the meeting in the usual sense and he remained in the room throughout the meeting. However, I believe that he did refer to the situation that he was in. I believe that Councillor O'Neill tried very hard at the start of the meeting not to contribute, most of the questions asked of those present came from Councillor Barry, but as the meeting progressed, he did ask and answer questions and contributed to the discussions. Despite, what I believe may have been his best intentions, he did allow himself to become involved contrary to the fact that he had a prejudicial interest at the time."* [Bundle B.1j page 267/268, paragraph 9.]

3.7.6 Although it is not clear who recorded the minutes of the inter-agency meeting, they are comprehensive and appear to be verbatim minutes or at least close to verbatim minutes. It is clear that the Respondent opened the meeting by saying *"I'm the Leader of the Council I want to ask yourselves that you explain the purchase of the property at Luther Street. We are trying to work out how we find ourselves here today."* After those present had introduced themselves, including James Guy the Inspire & Support Chief Executive, and Melanie Dennis, Manager at Inspire & Support, the Respondent asked them to explain *"what you are about, how the acquisition came about?"*. Mr Guy explains the intention of his company and the services that they provide. He explains that people believe the company was opening a hostel for sex offenders and that information was on Facebook. He also observes that *"I have never had this kind of meeting where the Police are represented."* He later explains that the Facebook page has given them cause for concern and asks the meeting if they are aware of it? The Respondent answers *"Yes, acutely aware."* There is further conversation about potential young residents with criminal records and whether the placement would be for offenders and the Respondent says *"There should have been a political oversight from GC [the former Chief Executive]. I have not had oversight on what you have highlighted."*

3.7.7 The Respondent then talks about the crux being that locally we have to speak to the public and that he needs to look at the groups involved in these matters. There is further discussion about the business needs and the company and how Mr Guy wishes to offer placements to children in the borough first, and he and Ms Dennis talk of support for young people who may be at risk of drugs and alcohol, and the significant problem with Spice. Councillor Barry complains that the company has gone about the process in the wrong way. Mr Guy apologises and explained that they would not want older people being concerned. The Respondent then becomes involved again and says that when he spoke to

Ms Dennis she said “troubled youths”. Ms Dennis says “I would never define them as troubled” and the Respondent says “*You used the term troubled. If you read my post I’m compromised there is an issue where I stand, I’m approaching this from Leader of the Council. A group of individuals has been banned from the site they turned it into something else that came from communication from me. I want to clear that up regards this sinister element.*”

Although it is not clear from the evidence, it seems likely that the Respondent is referring to an entry that he made on Facebook. No extracts from Facebook appear anywhere in the evidence, but the Monitoring Officer later on in the minutes refers to people becoming entrenched in a negative position and removing people from Facebook means that they will find another forum.

3.7.8 Mr Guy asks if the sinister element has been banned and the Respondent says he will speak to the independent group about that this evening. He then says “*It has always been 16–18, troubled children, it was turned on Facebook to something else that is not beneficial to you or the community. You know about my background I get the intention that we do not care, we do care others in that street cannot exclude themselves from that information. There is a massive swell of people who do not know what is going on, the school is very close, there is a mass of people making it something, so from our point of view we have to communicate and the void has been filled by others with another agenda. This conversation would have been helpful early on.*”

3.7.9 There is then a further discussion about information and misinformation, consultation and planning or other processes and the age group of residents in the home. The Respondent says “*We have looked at this for some time. We understand the business imperative and social imperative, we said we have not been in a position like this, we are a different type of leadership group, consultation is very big to us, it is not just about you. We do not want to do anything without people having full picture. We back our actions with our words. I’m grateful for you both coming here today **I know it might have felt like a cross examination.** I cannot present myself as a resident, it is difficult, there are a lot of things I can give you clarity on.*” [Our emphasis, Bundle B.1i page 261].

3.7.10 Councillor Barry, who was present at the meeting, describes it in his witness statement dated 15th of January 2020; “*This meeting took place in the Leader’s office and he was present. I believe that Councillor O’Neill declared an interest at the start. Kevin is someone who always declares in fact I would say that he is paranoid about interests. He did not leave the room, but he mostly sat back and listened. I do not recall him specifically asking questions or commenting at all. He sat away from the group at his desk. There was a lot of discussion about the need of the County to provide homes for this type of children and social services expenditure in respect of the same, which we were all in agreement with, however it was clear that this was not an appropriate scheme.*” [Bundle B.2i page 371, paragraph 7].

3.7.11 Councillor David Hughes was present at the meeting and said “*During the meeting Councillor O’Neill said that he had an interest in this matter and could not lead on it as it was next to his home. He said that he was concerned to understand the rationale behind the decision to have a house of this kind in this location. The other Councillors present and I explained that we all felt that houses*

*of this nature needed to be placed carefully in an appropriate location.” [Bundle B.2j page 375 paragraph 6]. “Councillor O’Neill **contributed to the meeting to a limited extent he did ask some questions relating to process and consultation and was involved in the discussions.** I consider he was entitled to do this as no decisions or votes were being taken I did not see anything wrong with him being there and involved.” [Our emphasis].[Bundle B.2j page 375 paragraph 8].*

3.7.12 The tribunal have carefully considered the evidence and submissions upon this disputed fact including what the Respondent said in interview. The general accuracy of the minutes of the meeting have not been criticised by the parties in submissions, it has not been suggested that they are incorrect. It can be seen that although the Respondent mentioned that he was compromised, this was not until some way into the meeting when he had already made contributions, and he did not say this at the outset. Councillor Barry’s witness evidence does not accord with the minutes or the other evidence. The Respondent did not declare an interest at the start of the meeting and he did make comments. Councillor Hughes confirms that the Respondent became involved asking questions and becoming involved in the discussions. The evidence of the Monitoring Officer’s statement also accords with the minutes. It is clear that the Respondent did play an active role in the meeting which went beyond that of merely a facilitator. He opened the meeting and sought an explanation of how the property had been purchased, he contributed information, complained at the lack of political oversight and discussed the Facebook situation as well as the approach of the leadership group. He was an active participant – he was not neutral as a facilitator might be. The Respondent was not passive but was giving his opinion and making comments and asking questions. He did not make any comments that were supportive of the proposal and so his comments were not balanced as one would expect a facilitator’s to be.

### **3.8. The Respondent did make comments at the inter-agency meeting on 15<sup>th</sup> August 2018 that were capable of influencing others present and any decision associated with it.**

3.8.1 The Ombudsman said in his report at paragraph 141 “*The comments attributable to him were also capable of giving the impression that he was not supportive of the proposal for this property and were therefore, at the very least, capable of influencing others present and any decisions associated with it.*” [Bundle B.1a page 42]. The Respondent argues that no decisions were to be made by the Council in relation to the Inspire plans.

3.8.2 As noted above, the Respondent played an active role at the meeting, making clear that he was the Leader, that there should have been political oversight and that he had not had oversight upon matters, seeking an explanation as to how the purchase came about and discussing the campaign upon Facebook. The Respondent says it would have been helpful to have had the conversation earlier on, and, in an indication of the likely tone of the meeting he tells the representatives of Inspire & Support that it might have felt like a cross examination. With regard to the submission that no decisions were to be made, this could not have been known in advance of the meeting, even if the meeting was primarily to seek information. A decision was made in connection with

proceeding with consultation at a public meeting, and there was the possibility, given the range of attendees, that other decisions may have been made at the meeting, or later on, and flowing from or associated with the meeting. Such decisions could include decisions made by Inspire & Support as to how to approach matters and the next steps or whether to continue with the project at all. In fact, upon the evidence, later in August 2018 and also after the public meeting, Inspire & Support did take the decision not to provide children and young people's services in the property.

3.8.3 The tribunal agree with the Ombudsman's observations in his report, cited above, that, as Leader of the Council who lived next door to the property, that the comments, in our judgment, were capable of influencing others and any decision associated with it.

### **3.9. The Respondent's conduct towards the former Chief Executive at the meeting of the 5<sup>th</sup> March 2019 failed to show respect and consideration to the former Chief Executive.**

3.9.1 The Ombudsman's report describes how the former Chief Executive Gareth Chapman and the Monitoring Officer understood that the meeting on 5 March 2019 was to discuss 'Cabinet Cover' and issues discussed in an email exchange of 26th February 2019. The then Deputy Chief Executive said that he did not know what the meeting was intended to cover and Councillor Thomas said he was asked by the Respondent to attend shortly before the meeting started. The former Chief Executive said that the Respondent ambushed the meeting and used the opportunity to have a go at him, raising several issues related to his performance as Chief Executive and advice that he had given. Mr Chapman said that he was given no prior knowledge or understanding of the concerns raised by the Respondent, who also referred to himself as Mr Chapman's line manager, despite the Respondent not having undertaken or attempted to complete any of the duties of a line manager. Mr Chapman felt that such a reference was intended to "belittle and intimidate me".

3.9.2 Mr Chapman says in his statement "*I had had enough by then and left the meeting. I had not anticipated being subjected to such criticisms particularly in front of members of my management team. I had no prior knowledge or understanding of his concerns about my performance or that he planned to discuss them at this meeting. This was appalling behaviour and I felt completely ambushed. He did not give me the chance or pause at any point for me to respond. He spoke to me as if I were a child. His tone of voice was very commanding and dictatorial. I felt demoralised and bullied. I am a professional have been throughout my career. At the level I am at, it should not have been done in front of others. There should have been a 1-1, I should have been briefed, forewarned and forearmed, there should have been open dialogue. If I have failings I need to know and understand what they are, I would of course want to put them right but this was denied to me. It could have been done in a review format. It should not have been a one-sided conversation, I had no right of response. I was shell shocked.*" [Bundle B.1h page 211, paragraph 25].



3.9.3 The Monitoring Officer in her statement says; “He *did not afford anyone in the room the chance to respond to any of the issues raised. At this point Gareth stood up and said that he couldn’t take anymore and left the room. I have the impression that all of us in the room were shellshocked by what we had observed. It was a very uncomfortable environment for us all. After Gareth left Councillor O’Neill continued in a similar vein he said that he shouldn’t be stopped from airing these issues, these things had to be said and resolved. I spoke and said that I agreed that matters did need to be resolved but that I felt it was a really inappropriate way for it to have been done.*” [Bundle B.1j page 270, paragraphs 16 and 17.

3.9.4 The Monitoring Officer continues “*I can appreciate why Gareth felt that he was ‘ambushed’ at the meeting of 5th of March. It was clear to all present that this was what Councillor O’Neill intended to do. I would describe it as an ‘attack’. There had been no pretext set for this meeting. I was astounded and shocked by the approach taken by Councillor O’Neill. Councillor O’Neill spoke in a heightened manner and you could tell that he felt very strongly about the issues raised. In my opinion Councillor O’Neill’s behaviour during this meeting was inappropriate and certainly disrespectful..... even if Councillor O’Neill had the best of intentions, his actions in attempting to discuss issues about an officer’s performance without advance notice, in the presence of others who are subordinates is wholly wrong in my opinion.*” [Bundle B.1j page 271 paragraph 20]. The Monitoring Officer made contemporaneous notes about this meeting which were exhibited to her statement. [B.1j pages 292-297].

3.9.5 Mr Cooper the former Deputy Chief Executive confirms that if the Respondent’s purpose for calling the meeting had been to hold Mr Chapman to account this was not communicated in advance and did not come across in that way. He says that the Respondent had not sought advice from him as to how to raise performance issues. He says that he did not really know what the meeting was for but it transpired very quickly that the purpose of the meeting was not what any of the officers in attendance including Mr Chapman were expecting. He describes the Respondent effectively going through a list of issues for 10 minutes and says “*I was surprised by Councillor O’Neill’s approach at this meeting and it was not what I was expecting. **He was clearly not going to be interrupted.** It was uncomfortable, and it placed me and the others in the room in a difficult situation. Although, I could tell from the way things were between Gareth and Councillor O’Neill that it was going to come to a head at some point, I was not expecting it that day. There are valid points on both sides, rightly or wrongly, tensions were building, **and it was coming but this clearly was not the right way for it to have done so.** I do have some sympathy with Councillor O’Neill and the other politicians and really do consider that he may have been attempting to act with the best of intentions.*” [Our emphasis] [B.1j page 252 paragraph 13].

3.9.6 At interview, the Respondent described his demeanour at this meeting as “assertive” but denied that he had behaved in a bullying, demoralising, intimidating, undermining and disrespectful manner towards Mr Chapman. The Respondent said “*I think it was appropriate. It was reasonable. Um, some would say, long overdue.*” [B.2L page 537]. It was put to the Respondent that Mr Chapman felt ambushed and did not know what he was going into and there was personal criticism. The Respondent said that “*.. my view was to take it on the*

*chin, you move forward... be adult and professional about it.”* The Respondent said he was right to have the Monitoring Officer at the meeting and when it was put to him that both the Monitoring Officer and the Deputy Chief Executive expressed the view that it was not the most appropriate forum for Mr Chapman’s behaviour or performance to be scrutinised the Respondent said *“I should have done it earlier. And it was appropriate. I’m not being true to myself or the people who elected me, if I can’t challenge something in that fashion, in a reasonable way.”* [B.2L page 543].

3.9.7 This was a view later repeated by the Respondent *“I believe I should have challenged Gareth much, much earlier. I believe the format in which I challenged him was right and proper at that time I felt the attendance was right and proper at that time. I felt I was professional and assertive when I did it. It hadn’t been done before. Not in that way, it happened twice in meetings where I’d made almost like a one line challenge.”* [B.2L page 549].

3.9.8 The Respondent was asked by the Investigating Officer why he did not use the authority’s officer/member Protocol Process to pursue concerns with Mr Chapman either previously or on 5 March 2019. [B.2.L page 528], but he did not offer any answer and the point was not pursued in interview.

3.9.9 The Respondent submitted that the clear and consistent evidence including from Mr Cooper was that there had been a reciprocity of challenge and that the foundation for the Respondent’s challenge in terms of the former Chief Executive’s conduct in office was a fair one.

3.9.10 The Member Code of Conduct of the authority includes the Protocol that governs Officer/ Councillor relations. This requires that Councillors and Officers should treat each other with respect at all times and that

*“2.7 All dealings between Councillors and Officers should observe reasonable standards of courtesy and neither party shall seek to take advantage of their position.*

*2.8 If there are any concerns where Councillors may have reason to complain about the conduct or performance of an Officer, all such complaints should be made in person or in writing, either to the Chief Executive, Director or Monitoring Officer as appropriate and in the case of the Chief Executive to the Monitoring Officer.”*

3.9.11 The tribunal note that it is not in dispute that the Respondent failed to follow the Protocol, and did not give the former Chief Executive any indication prior to the meeting of 5 March 2019, that he intended to raise performance issues with him. The tribunal note that in the statement of Councillor Geraint Thomas [B.2g page 350 and 351], he described the meeting of 5 March 2019 as very relaxed and open with a fine and comfortable atmosphere. He described the way in which the Respondent spoke to Mr Chapman as being *“in a relaxed and reasonable manner”*. These descriptions are at odds with the rest of the evidence, including the Respondent’s own evidence of his assertive tone and manner. Accordingly, we do not accept that Councillor Thomas’s account of the meeting is reliable. The tribunal prefers the accounts of the former Chief Executive and the Monitoring Officer and Mr Cooper. The Monitoring Officer says of this meeting that she attempted to explain a point and *“Councillor O’Neill told*

*me “you will get your turn”. I do not think he was trying to be aggressive towards me but had got himself so worked up he didn’t want to be stopped by me.....He did not afford anyone in the room the chance to respond to any of the issues raised. At this point Gareth stood up and said that he couldn’t take anymore and he left the room.” [B.1j paragraph 16 page 270].*

3.9.12 The tribunal find that the Respondent’s conduct towards Mr Chapman at the 5th March 2019 meeting clearly failed to show respect and consideration to him. No warning was given to Mr Chapman about the contents of the meeting and the way in which he was spoken to, upon the evidence of Mr Chapman, Mr Cooper and the Monitoring Officer, which we prefer, was inappropriate, hectoring and uninterruptible, and went beyond assertiveness.

#### **4. FINDINGS OF WHETHER MATERIAL FACTS DISCLOSE A FAILURE TO COMPLY WITH THE CODE OF CONDUCT**

**The inter-agency meeting of 15<sup>th</sup> August 2018.**

##### **Allegation 1.**

**Whether the Respondent had failed to declare orally the existence and nature of a personal interest in the business of the authority relating to a property at Luther Lane at an inter-agency meeting on 15<sup>th</sup> August 2018, before, or at the commencement of the consideration of the property or when the interest became apparent, contrary to paragraph 11(1) of the Code.**

##### **4.1 The Ombudsman’s Submissions**

4.1.1 The Ombudsman said that *“the minutes of the meeting suggest that the Respondent did not disclose his interest at the start of the meeting despite the fact that this was the only item for consideration and that the meeting had been planned for the purpose of discussing this issue only. The PSOW submits that his interest would have been apparent to CO’N at the outset. Whilst noting that C O’N refers to his position much later in the meeting after he said ‘I want to ask yourselves that you explain the purchase of the property’ and expressed his views, i.e. ‘There should have been a political oversight from GC’, this is not in keeping with the spirit and strict requirements of this provision of the Code.” [D.1 page 9]. The Ombudsman’s report makes the same point at paragraph 180 “On 15th August, whilst acknowledging Councillor O’Neill’s assertion that everyone knew of the location of the property and of his interest in it, in the interests of openness and transparency Councillor O’Neill should have at the very least made a formal declaration concerning his personal interest, at the start of agency meeting, or as soon as possible afterwards, given that this interest was apparent to him at the outset.” [ B.1a page53]*

##### **4.2 The Respondent’s Submissions**

4.2.1 The Respondent submitted that he consistently considered and pronounced his interest in advance of and at every opportunity, (often more often than once). [C1 page 14]. Reference was made to the evidence of Councillor

Barry and his description that the Respondent was almost “paranoid” about it [B.2i page 371 paragraph 7]. The Respondent argued that the consistent evidence, even from witnesses more aligned to the former Chief Executive (Lisa Curtis Jones and Carys Kennedy), and from contemporaneous documents where they exist, is that he declared his interest more than once in the 15th and 20th of August meetings. (We are not concerned with the meeting of 20th August 2018).

### **4.3 Case Tribunal’s Decision on Allegation 1**

4.3.1 On the basis of the findings of fact, the Case Tribunal found by a unanimous decision that there was a failure to comply with the relevant authority’s code of conduct as follows:

4.3.2 Paragraph 11 (1) of the Code of Conduct states that where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

4.3.3 The minutes to the meeting that have been previously referred to were exhibited to the statement of Ellis Cooper and it has not been suggested by either party that these minutes are inaccurate (indeed the Respondent refers to them and relies upon them for some of the points that he makes). Those minutes make it clear that the Respondent did not at the commencement of the meeting, orally declare the existence and nature of his personal interest- he introduced himself as the Leader of the Council and asked Inspire & Support to explain the purchase of the property. Much later in the meeting the Respondent, apparently referring to Facebook says that *“If you read my post I’m compromised there is an issue where I stand, I’m approaching this from Leader of the Council.”* [B.1i page 259]. Later, near the end of the meeting the Respondent says that *“I cannot present myself here as a resident, it is difficult”* [B.1i page 261].

4.3.4 The tribunal agrees with the Ombudsman’s submissions at 4.1.1 above. The Respondent did not behave as he should have done to have complied with the Code. He did not disclose his personal interest before or at the commencement of consideration of the matter. He should have unequivocally done so at the outset, at the beginning of the meeting. His declaration of interest, such as it was, was a reference to being compromised and came some way through the meeting. The minutes demonstrate that the evidence of the Monitoring Officer was accurate and the tribunal prefers this to the evidence of Councillor Barry, relied on by the Respondent, who said that *“I believe that Councillor O’Neill declared an interest at the start. Kevin is someone who always declares. In fact I would say that he is paranoid about interests.”* [B.2i page 371 paragraph 7]. On the evidence of the minutes, Councillor Barry was wrong; the Respondent failed to declare an interest at the start, although implicit in Councillor Barry’s remarks is the recognition that the Respondent should have done so.

## **Allegation 2**

**Whether the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in not withdrawing from the room when the property was being considered at the inter-agency meeting on 15<sup>th</sup> August 2018.**

### **4.4 The Ombudsman's representations.**

4.4.1 The Ombudsman submitted that the requirements of paragraph 14(1) of the Code applied since the property and the issues associated with it were being **considered** at the meeting and it was irrelevant that the parties at the meeting were not required to make any 'decisions' associated with the property/development at that meeting. The Ombudsman's view was that the Respondent's "*personal and prejudicial interest in this matter meant that he should not have been involved in any business of the Council relating to this matter. However, the concession made by the MO provides mitigation for any breaches associated with his attendance at the meeting on 15<sup>th</sup> August.*" [D page 10]. The Ombudsman in final submissions also made the comments cited in full at 3.3.17 above [Further Submissions page 97 paragraph 6] in which it is asserted that the factual context speaks for itself and "*it is difficult to imagine a factual scenario where the existence of a prejudicial interest ought to have been more obvious.*"

### **4.5 The Respondent's submissions.**

4.5.1 The Respondent submitted that he did not have a prejudicial interest since, broadly there was no Council decision to be made at the inter-agency meeting, and that in any event the "ordinary person" test (in paragraph 12 (1) of the Code) is not met in that the ordinary informed member of the public would not consider that the Respondent had a prejudicial interest in any matter where the Council had no decision or remit. [ Further Submissions page 75 paragraph 3].

### **4.6 The Case tribunal's decision on allegation 2.**

4.6.1 On the basis of the findings of fact and that the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane, the tribunal unanimously found the allegation proven and there was a failure to comply with the authority's Code of Conduct as follows.

4.6.2 Paragraph 14(1) of the Code of Conduct states that "*... where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee-*

*(a) withdraw from the room, chamber or place where a meeting considering the business is being held -"*

4.6.3 The Case Tribunal found that the Respondent had a prejudicial interest and did not withdraw from the room at the inter-agency meeting on the 15<sup>th</sup> August 2018 when the Luther Lane property was being discussed in breach of

paragraph 14(1) (a) of the Code. The case tribunal agrees with the Ombudsman that in the absence of a dispensation from the standards committee, that the Respondent should not have been present at any meeting where the prejudicial interest was under consideration at all but notes the mitigating factors that are addressed further below.

### **Allegation 3**

**That the Respondent had a prejudicial interest in relation to the business of the authority regarding the property at Luther Lane and was in breach of the Code in that he was seeking to influence a decision about that business and made oral representations at the inter-agency meeting on the 15<sup>th</sup> August 2018.**

#### **4.7 The Ombudsman's submissions.**

4.7.1 The Ombudsman's report at paragraph 181 makes the point that paragraph 14 of the Code required the Respondent to withdraw from the room, not to seek to influence a decision about that business or make any oral representations about that business. The Ombudsman observes "*The Code requires those with a prejudicial interest to withdraw in such situations so that their contributions and/or mere presence cannot influence others. His failure to do so is clearly contrary to those requirements.*" [B.1a page 53]. The Ombudsman further says that all and any oral representations are precluded where a member has a personal and prejudicial interest in any business of the authority unless in receipt of a dispensation. The Ombudsman rejects any anticipated submission that representations are "arguments in an attempt to persuade". [D.1 page 10].

4.7.2 The Ombudsman further noted that decisions of the authority are not confined to statutory decisions such as the grant of planning permission, and that the authority makes other non-statutory decisions all the time. Such decisions include, for example whether an authority expresses support for or disapproval of a private proposal within the authority area. These submissions on decisions were made in the context of the stage one consideration of the facts but are also relevant here (Further Submissions page 95).

#### **4.8 The Respondent's submissions.**

4.8.1 The Respondent submits that there was no Council decision to be made, or to influence, or to seek to influence. The small planning matter associated with the proposal (disability adjustment) had already been resolved. The Respondent submits that the evidence consistently demonstrates that Inspire's decision to withdraw was its own and was not influenced by the Respondent's position. [C.1 page 7]. The Respondent further invites the tribunal to review the notes taken by the former Deputy Chief Executive on this matter, and that there were multiple vociferous views in the room which were not the Respondent's. The Respondent repeatedly refers to the complexities of his position and that on most of the occasions the Respondent spoke it was two to three words. Further, the Respondent says that the primary reason for the Ombudsman's conclusion that he sought to influence the matter, was the Respondent's own evidence about being approached by members of the public and their perceptions, which the Respondent consistently corrected. It was submitted that his volunteering of this

information was not evidence of him seeking to influence, but was evidence of the opposite. [C.1 page 15].

4.8.2 These submissions were repeated in the written submissions of 27<sup>th</sup> November 2020 [Further Submissions page 75/76]. In the Respondent's final submissions of 9<sup>th</sup> December 2020, he attaches a letter from Inspire and Support on which he relies, addressed 'Dear Residents', which although undated, says that following the information sharing event on 20<sup>th</sup> August 2018 (which was a public meeting that is not the subject of any allegations for the tribunal's consideration), that the company shared 'all of your views' with our board of directors and completed a risk assessment, 'the result of which is that we will drop all plans to support Children and Young people at the property and will instead redevelop it for general sale.' [Further submissions page 90]. The Respondent, as part of his submissions on this point, notes the Ombudsman's submission that the decision of the company to withdraw their plans is very likely to have had a beneficial impact on the Respondent and his family, over and above that of other members of the community, as an immediate neighbouring property owner. The Respondent says that, to the extent that it is relevant, there was no obvious beneficial impact for the community of the development: it was intended for children who would come from outside the community. The Respondent makes the point that the Ombudsman did not take any evidence from Inspire & Support, but such evidence as exists and was confirmed by third parties indicates that Inspire's decision was entirely its own. [Further submissions page 86].

#### **4.9 The Case Tribunal's decision on allegation 3.**

4.9.1 The Case Tribunal unanimously found that the allegation was proved and that there had been a failure to comply with the Code as follows; Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority, states that a member must "*not seek to influence a decision about that business*".

4.9.2 The tribunal has found that the Respondent had a prejudicial interest and the inter-agency meeting was, as noted above at 3.3.16, considering the business of the authority. The decision about that business does not need to be a formal decision of the authority that is subject to a vote or to committee approval or other formal process. There are a range of decisions that can be made 'about that business' and associated with that business. For example, one such decision could be whether to place children or young people from the authority with that care provider.

4.9.3 The tribunal notes that the Respondent in his comments on the draft Ombudsman report said that "*.. it was always made clear the property was to support troubled children from outside Wales. It is clear this will not provide any benefit for the residents of Merthyr Tydfil and only support the business aims of the company.*" [B.2n page 595]. This point was also made in the representations as noted in paragraph 4.7.2 above. In fact, at the inter-agency meeting, Mr Guy of Inspire & Support said that his company was set up with the express intention of supporting young people and children in South Wales and their research had looked at the whole of Wales and they had found that Merthyr Tydfil was the only Borough that did not have any small group registered homes for a small number

of children to live as a family. He was aware that lots of young people have to leave the Borough because they can't be supported and some people have to go to other boroughs. That is what had led them to Merthyr where they were looking to set up a normal family home. [B.1.i page 254/255]. It is clear from Mr Guy's comments therefore that they were looking to house children from the Merthyr area.

4.9.4 Inspire & Support were a new and small company called to a meeting at which the Police were in attendance which clearly surprised them, as commented on by Mr Guy. The Ombudsman's report says at paragraph 141, of the Respondent's contribution to the meeting "*The comments attributable to him were also capable of giving the impression that he was not supportive of the proposal for this property and were therefore, at the very least, capable of influencing others present and any decisions associated with it.*" [B.1a page 42]. The tribunal agrees. The Respondent, as leader, did not have to get involved at all with this matter as there were two other Councillors, Hughes and Barry also present at the meeting who could and should have dealt with the matter. But, as is noted later under sanction, the Respondent clearly felt that neither could do as effective a job as him.

4.9.5 Paragraph 14(1)(e) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must "*not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.*" The Case Tribunal found that the Respondent had a prejudicial interest in the property at Luther Lane and made oral representations in the inter-agency meeting on the 15<sup>th</sup> August 2018 in breach of paragraph 14 (1) (e) of the Code.

4.9.6 The Case Tribunal has found as a matter of fact that the Respondent went beyond the role of facilitator at the interagency meeting on 15 August 2018 and made a number of interventions. It is clear from the minutes of that meeting that the Respondent's contributions were not confined to two or three words as he contends and we refer to our comments at 3.7.13 and 3.8.3 above. The Respondent was making oral representations at that meeting- he did not cease to make comments after declaring that he was compromised, and, given that his prejudicial interest was apparent at the outset, he should not have made any comments. He started by saying that he wanted the company to explain the purchase of the property and 'how we find ourselves here today'. The comments he made related to there not having been political oversight on this matter and that he has not had oversight on what has been highlighted. He talks of Facebook and a massive swell of people who do not know what is going on, and are making it something, that the Council has to communicate on this as the information void has been filled by others with another agenda. He says "*we have not been in a position like this, we are a different type of leadership group, consultation is very big to us, it is not just about you. **We do not want to do anything without people having the full picture.***" [Our emphasis] [B.1i page 261]. These comments constitute oral representations. For example, that there should have been and should be political oversight of this matter. The Respondent talks of the need to provide information because of the response on social media, he says that consultation is important to his leadership group. The words highlighted in bold



above also give the clear impression that the leadership group and/ or the Council will be taking some action that will require a decision once people have the full picture. The Respondent has made it clear that he is the leader of the Council. He is in a position of authority and has opened the meeting seeking to know how the situation (of Inspire & Support purchasing a building in a residential area to support children and young adults, of which he was until recently unaware), has come about.

4.9.7 By making the comments and being involved in a meeting about a property next door to his home in which he had a prejudicial interest, and as leader of the Council, the case tribunal are satisfied that the Respondent was seeking to influence a decision about that business. The Respondent said in his comments on the draft Ombudsman's report *"I could not influence the matter as there was nothing anyone could do to stop Inspire & Support, as they had complied with regulations and were 'ready to go' to start business at St David's. After this time, Inspire & Support recognised the public disquiet and arranged a public meeting."* [B2.n page 595]. In fact, it can be seen that the company did not proceed, and in that sense was stopped from proceeding, apparently after recognising the strength of public feeling against their proposal. Public feeling that was highlighted by the Respondent in his comments at the interagency meeting.

#### **Allegation 4**

**4.10 That the Respondent's e mail to the Director of Social Services on 16<sup>th</sup> August 2018 failed to include details of the Respondent's personal interest in the business of the authority in relation to the property at Luther Lane, and that the e mail sought to influence a decision about that business and made written representations about that business in which he had a prejudicial interest, in breach of the Code.**

#### **The Ombudsman's submissions.**

4.10.1 The Ombudsman's report at paragraph 85 records that the Respondent said *"that he did not consider whether he needed to expressly state that he had a personal interest in the application when emailing the Director of Social Services on 16 August, as it was 'glaringly obvious'. He said that he had spoken to her about it, his position had been clear since 'day one'. He said that the questions he raised in the email were focused on finding out what influence the organisation had in the town. He said he suspected that he and the other members of his group had not been given enough information about the extent of the involvement by Officers and previous discussions with Inspire & Support to reach a decision."*

4.10.2 The Ombudsman noted that the email does not contain a declaration which would satisfy the provisions of 11 (2) (a) and *"Additionally, in view of his prejudicial interest in this matter, I do not consider that it was appropriate for Councillor O'Neill to make written representations of this nature. I can see no justifiable reason for his conduct in doing so. Councillors Barry and Hughes were extensively involved in this matter and could have engaged with the Director of Social services in this way. I consider that doing so, in the full knowledge of the*

*Monitoring Officer's advice that he had a personal and prejudicial interest, was inappropriate and unnecessary. Whilst acknowledging Councillor O'Neill's strong feelings about the need to respond to questions posed by members of the community and his desire to be open and transparent, his conduct in involving himself in such a controversial matter in the knowledge that he was 'compromised', was capable of negatively impacting on the reputation of the Council and its elected members. I am mindful that Councillor O'Neill himself advised that some members of the public see that he had been able to influence this matter. I am therefore satisfied that his actions in sending this email are suggestive of a failure to comply with paragraphs 14 (1) (c) and (d) of the Code."* [B.1a pages 54 and 55 paragraph 185].

4.10.3 The Ombudsman says that the proximity of the email to the meeting, and the comments made by the Respondent towards the end of the meeting the previous day, do not relieve the Respondent of his responsibility to declare his interest. The declaration is required in the promotion of the principle of honesty and to ensure transparency and openness. The email does not in the Ombudsman's view, contain an appropriately worded declaration sufficient to demonstrate compliance with the Code (11)(2)(a). [D.1 page10].

#### **The Respondent's submissions.**

4.11.1 The Respondent points out that he sent the email to Lisa Curtis Jones the Director of Social Services who had been present at the meeting on 15 August, and that she was well aware of his interest and position as a resident. It is submitted that the context has to be relevant to the application of this paragraph of the Code and that the Ombudsman's conclusion that the email does not contain the declaration that would satisfy 11(2)(a) would be absolutely right were it not for the proximity of the meeting. The email was not a surprise or unannounced and thus did not need more context. There was no attempt whatsoever at deception or lack of transparency. [C.1 page 14]. The Respondent submits that the email cannot be seen in isolation and that the content is important as the Respondent was not raising issues of personal concern to him but was seeking clarity on issues which arose at the meeting and which affected the community. [Further submissions page 74].

#### **4.12 The Case Tribunal's decision on allegation 4.**

4.12.1 It was not in dispute that the email sent by the Respondent on 16<sup>th</sup> August 2018 to Lisa Curtis Jones did not include any declaration of his personal or prejudicial interest in the matter of the Luther Lane property. The Case Tribunal found by a unanimous decision that there was a failure to comply with the relevant authority's Code of conduct as follows:

4.12.2 Paragraph 11(2)(a) of the Code of Conduct states that "(2) *Where you have a personal interest in any business of your authority and you make- (a) written representations (whether by letter, facsimile or some other form of electronic communication) to a member or officer of your authority regarding that business, you should include details of that interest in the written communication;*"

4.12.3 The Respondent in effect argues that since the email was sent in such close proximity to the meeting and that the recipient was aware of his interest, that, in this context, there is no need to comply with the Code. The tribunal agrees with the submission of the Ombudsman at 4.10.3 above. The requirements of the Code are straightforward and should not be difficult to comply with, and if complied with, offer protections against allegations such as allegation 4. When emails or written representations in other form are made, there is the possibility or likelihood that they may be referred to at a later date and/or shared with others, not just the immediate recipient. Those others will not be aware of a personal or prejudicial interest if, as here, the Code is not complied with. It is not for the Respondent or anyone else bound by the Code, to pick and choose compliance with the Code depending on proximity to meetings and the perceived knowledge of others. To do so breaches and undermines the Code and its purpose.

4.12.4 Paragraph 14 (1) (c) of the Code of Conduct in relation to where a member has a prejudicial interest in any business of the authority states that a member must *“not seek to influence a decision about that business”*. Paragraph 14(1)(d) of the Code of Conduct states that where a member has a prejudicial interest in any business of the authority that the member *“must not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business”*

4.12.5 The Case Tribunal unanimously found that the Respondent had a prejudicial interest in the property at Luther Lane and sent an email to the Director of Social Services on 16<sup>th</sup> August 2018 in breach of paragraphs 14(1) (c) and (d) of the Code. The breach of 14(1)(d) is straightforward. The email sent by the Respondent [B.2f page 131/132] clearly makes representations about the business of the authority in which the Respondent has a prejudicial interest. The Respondent in the email says that the meeting asked more questions than it answered and said that he had very little clarity of business intent or historical success in the chosen field from Inspire & Support. He sought the answer to a number of questions be provided to him before 5 pm on Monday, 20 August 2018 at the latest and expressed the view that he suspected that this model of service provision, that he described as the ‘St David’s type model’, has never been discussed in any particular detail or in the format presented by Inspire & Support on the previous day. The Respondent talked of his suspicions that this model had been developed away from political scrutiny and asked for details of when there were specific conversations between social services and the Commissioning Manager in relation to St Davids, and he wanted to know if there were any other projects of a similar nature in existence where Social Services were aware of them and the elected members were not. The email talked of wanting more transparency to the process and an early oversight by the appropriate members. The email says *“As I stated yesterday as an Elected Member and Leader it is my responsibility to hold service leads and ultimately the Chief Executive to account for the services and to be able to report back to the public whatever details they require where appropriate.”*

4.12.6 The email in response from Lisa Curtis Jones on 16<sup>th</sup> August 2018 told the Respondent, amongst other things, that Annabel Lloyd (Head of Service for Children) was emailed on 2nd August 2018 and the address of the placement

was included. A meeting was put in the diary for 28th August 2018 to discuss these plans. Annabel Lloyd texted Lisa Curtis Jones straight away to tell her where the address was, and Lisa Curtis Jones said that she went to inform the Respondent who was in a meeting, so she spoke to Councillor Hughes who said that he would inform the Respondent. [B.2f page 134]. The tribunal notes that the meeting planned for the 28<sup>th</sup> August to discuss this does not appear to have taken place, or at least was preceded by the meetings being set up on the 15<sup>th</sup> August 2018.

4.12.7 The contents of the Respondent's email, in making clear his displeasure and suspicions that the proposed model of service delivery in this case was developed away from political scrutiny, and asking for further information, does seek to influence a decision about that business. The tribunal refers to the earlier discussions on decisions within this determination- the fact that this email request for information and expression of the Respondent's views, was made after the meeting on 15<sup>th</sup> August 2018, does not mean that there was no decision to influence. The email from the Respondent seeks clarity about conversations between the commissioning agent and the Social Services Department and in the tribunal's judgement, the rest of the email points to decisions to be made about the future process for developing the 'St David's model' so that there is transparency and early oversight by the elected members. It cannot be said, at this stage of the Respondent's knowledge of the matters, and given his request for more information, that there will be no decision to be made on this business of the authority.

## **Allegation 5**

**4.13 Whether the Respondent's actions in speaking at the meeting of the 15<sup>th</sup> August 2018 and sending written correspondence to an officer in the form of an e mail to the Director of Social Services on 16<sup>th</sup> August 2018, were seeking to influence a decision about the business of the property at Luther Lane in breach of the Code, and whether such conduct, if proved, could reasonably be regarded as bringing his office or authority into disrepute, in breach of the Code.**

### **The Ombudsman's submissions.**

4.13.1 The Ombudsman's report at paragraph 186 says; *"...I consider that Councillor O'Neill's actions involving himself in this matter to such an extent, contrary to advice received, is also capable of bringing the authority into disrepute. His involvement in this matter has been viewed by members of the public as having been influential. According to Councillor O'Neill, the impression gleaned by members of the public that he 'stopped' the development in his own street can only serve in my view to negatively impact upon the reputation of the Council and the public perception of its elected members. In this context, I am satisfied that Councillor O'Neill's actions and speaking at the meeting, sending written correspondence to an officer and seeking to influence the matter is suggestive of a breach of paragraph 6 (1) (a) of the Code."* [B.1a page 55].

4.13.2 The Ombudsman points out that actual evidence of disrepute is not required and suggests that the Respondent's conduct could **reasonably be regarded** as bringing the office or authority into disrepute. [D.1 page 9].

### **The Respondent's submissions**

4.13.3 The Respondent denies that his behaviour went beyond that of facilitator at the inter-agency meeting, and denies the Ombudsman's suggestion that his conduct breached Code 6(1)(a). The Respondent submits that "*The only apparent reason for this conclusion was C O'N's own honest evidence that the community had the impression that he could or should be stopping the planned home at St.David's – an impression is clear from his evidence that he sought to stop and correct at every opportunity. C O'N cannot be held culpable for a wider community understanding that he discourages at every opportunity. Further, there is no actual evidence (and none was referred to by PSO) that his role as resident in this context had the effect – or even came close to having the effect or potential to – bringing his office or authority into disrepute.*" [C.1 page 13].

### **The Case Tribunal's decision on allegation 5**

4.14.1 The Case Tribunal unanimously found that the Respondent's conduct in speaking at the inter-agency meeting on 15<sup>th</sup> August 2018 and sending the email to the Director of Social Services on 16<sup>th</sup> August 2018 in relation to business of the authority in which he had a prejudicial interest amounts to a breach of Paragraph 6(1)(a) of the Code. "*6.-(1) You must - (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.*"

4.14.2 The Respondent had a clear prejudicial interest in the matter. As he noted himself in interview, he had invested a lot of money in his property, right next door. The issues with the potential use of St. David's as accommodation for troubled children and young people would be similar to a planning application, in that this matter had the potential to affect the value of the Respondent's property. The Respondent submits that it was others who had the impression that he could or should be stopping the planned home at St David's and that he sought to correct this at every opportunity. The Respondent also continued to maintain that he did not have a prejudicial interest. At the same time that the Respondent was proclaiming this view he was attending at a meeting and making written representations contrary to the Code. However, the tribunal's findings of fact and of the prejudicial interest mean that the Respondent should not have been involved at all at the inter-agency meeting on the 15<sup>th</sup> August 2018. He should not have been present. He should not have been emailing the Director of Social Services for the authority demanding information on the process that led to the development next door to his home and demanding to know when the authority had first become aware of it.

4.14.3 The tribunal's task is to assess whether the Respondent's conduct in breaching the Code in the manner found, could also 'reasonably be regarded as bringing your office or authority into disrepute'. In the tribunal's assessment it could- the Ombudsman has observed elsewhere that the potential for the

Respondent to be characterised as a NIMBY ought to have been entirely clear. That the Respondent remained involved in the way that the tribunal has found could reasonably be regarded as bringing his office, as leader, and the authority into disrepute. As Leader, the public perception is likely to be that he has a level of influence and ability to influence the business of the authority.

## **Allegation 6**

### **4.15 Whether the Respondent's conduct towards the former Chief Executive of the Authority at the meeting on the 5<sup>th</sup> March 2019 was inappropriate and failed to show respect and consideration to him in breach of the Code.**

#### **The Ombudsman's submissions.**

4.15.1 This issue has been explored from paragraph 3.9 above. The Ombudsman has not disputed that there appears to have been a breakdown in the relationship between the Respondent and the former Chief Executive, but rejects that the nature and history of the relationship provided a fair and just foundation for the Respondent's approach in holding the former Chief Executive to account at the meeting on 5 March 2019. The Ombudsman notes that there are appropriate mechanisms in place in the Council for elected members to hold officers to account, and that such processes were not used by the Respondent [D.1 pages 5 and 8 and paragraph 198 of the Ombudsman's report B.1a page 59].

#### **The Respondent's submissions.**

4.15.2 The Respondent has said that there was a reciprocity of challenge from the former Chief Executive and that the foundation for the Respondent's challenge in terms of the former Chief Executive's conduct in office was fair. The Respondent argued that it was the content of the criticism that caused offence and led the former Chief Executive to complain to the Ombudsman, rather than the manner of the delivery of it. The Respondent accepts that the meeting could have been handled differently, but says it was not an obvious breach of the relevant part of the Code when the wider context is considered. [C.1 page 13]

#### **The Case Tribunal's decision on Allegation 6.**

4.15.3 The case tribunal unanimously find that the Respondent's conduct towards the former Chief Executive of the Authority at the meeting of 5<sup>th</sup> March 2019 breached paragraph 4(b) of the Code which states that a member must "*(b) show respect and consideration for others.*"

4.15.4 The case tribunal note the contents of paragraphs 3.9.1 - 3.9.13 and the finding of fact on this issue above. The Respondent's argument that he had good reason to raise the issues with the former Chief Executive does not prevent the manner of them being raised from being a breach of the Code.

## **5. SUBMISSIONS ON ACTION TO BE TAKEN**

### **5.1 The Respondent's Submissions**

**[C.1 pages 18-29, Further Submissions pages 74-80, 86-89]**

5.1.1 The Respondent contended that if any breaches are found than they are at the lower end of the spectrum of seriousness. They principally demonstrate naiveté by an officer new to an immediately senior role in local government, and at an authority where political tensions between parties and individuals have historically been complicated and fraught. The Respondent has since worked very hard to improve himself and his understanding of his position and responsibilities and he will continue to do so in the service of his community.

5.1.2 There was no intention to deceive nor any indication of dishonesty – there is no accusation that the Respondent is trying to conceal an interest in connection with the St David's property.

5.1.3 The Respondent maintained that save for the 16th August email, where the context was obvious, the Respondent disclosed his interest and his discomfort at his 'compromised' position on every occasion/meeting relating to the Inspire proposals for the property.

5.1.4 The Respondent has been candid and open in giving evidence, and his concern and interest with regard to the Inspire proposals was not simply out of self-interest, but out of his genuine concerns for a community of elderly people and a nearby school.

5.1.5 The incidents which were the subject of the complaint were isolated, the St David's property allegations took place over a period of no more than two weeks and there are no allegations or findings of incompetence or systemic failings or breaches. They are not indicative of any pattern of behaviour.

5.1.6 The Respondent regrets the lack of notice of his criticisms of the former Chief Executive at the March meeting, but stands by the facts of his criticisms and the need for those matters to have been addressed and corrected.

5.1.7 The Respondent has a long and unblemished history of serving the public, having previously had a distinguished decorated four-decade career in the South Wales Police, retiring in 2014 as Chief Superintendent Divisional Commander Northern Division.

5.1.8 The Respondent made a request for statutory support for the authority from Welsh Government in June 2019. As a result, an external adviser, John Gilbert, provided a report in September 2019 setting out a framework for improved governance, leadership and accountability. The Respondent is committed to implementing the recommendations and making positive change to improve operations and the culture at Council.

5.1.9 The Council is continuing to make progress and the Respondent has an excellent positive and productive working relationship with the new Chief Executive, Ellis Cooper.

5.1.10 The Respondent has undertaken various leadership training during his time in office including the WLGA Leadership course, and he is committed to continuing training.

5.1.11 The Respondent now has greater insight into the events which were the subject of the original complaint and recognises the importance of concepts such as personal interest and prejudicial interest. He has a greater understanding of the Code.

5.1.12 The Respondent has not and did not recklessly or deliberately ignore the advice of the Monitoring Officer.

5.1.13 A suspension would be inconsistent with Case Tribunal decisions. Suspensions have been imposed for conflict-of-interest offences or deliberate acts to obtain a personal benefit or attempts to deceive/dishonesty. That is not the case here.

5.1.14 Against the background of progress being made by the Council, the public interest would not be served by issuing a sanction beyond a warning in this matter. A more serious sanction would risk halting the significant progress the Respondent has made in his own learnings and his contribution to the Council's progress.

## **5.2 The Ombudsman's submissions [Further Submissions pages 66-70, 94-97]**

5.2.1 The Ombudsman contended that the purpose of the ethical standards framework is to promote high standards amongst members of councils in Wales and that the Code of Conduct is of central importance in maintaining public confidence in local democracy. Sanction is a matter for the Case Tribunal but the Ombudsman wished to highlight relevant factors from the Adjudication Panel for Wales' Sanctions Guidance ("the Guidance").

5.2.2 In terms of the seriousness of the breaches, Evidence suggested three breaches of the Code in relation to the inter- agency meeting, a further three in relation to the email of 16 August 2018, and a breach of paragraph 6(1)(a) in respect of his involvement on these two occasions in the Luther Lane matter.

5.2.3 Whilst the Respondent's conduct at the inter-agency meeting and in sending the email of 16th of August may not have been motivated exclusively by personal gain, the decision made by Inspire & Support to withdraw their plans is likely to have had a beneficial impact on the Respondent and his family over and above other members of the community, as an immediate neighbour.

5.2.4 It is reasonable that discussions at the inter-agency meeting may have at the very least contributed to Inspire & Support's decision not to proceed with their plans, potentially resulting in a loss of accommodation for troubled teenagers who needed a home.



5.2.5 The Respondent's blatant disregard for the advice of the Monitoring Officer at the inter-agency meeting is a relevant factor in assessing the seriousness of any breaches associated with it.

5.2.6 The nature of the Respondent's conduct at the inter-agency meeting of 15 August 2018 clearly falls below the standards of behaviour expected of an elected member and would be capable of undermining public confidence in the role of elected members more generally and ultimately the Council itself, to such an extent that it would at the very least have the potential to bring the Council or office into disrepute.

5.2.7 With regard to the meeting of 5 March 2019, the nature of the breach, including the Respondent's expressed pre-determined intention and motivation to confront the complainant at the meeting, should be taken into consideration. Further the Ombudsman directs the tribunal to the impact and actual consequences on the complainant, the former Chief Executive, detailed in his statement.

5.2.8 The Respondent's blatant disregard for the member/officer protocol is another relevant factor to be taken into consideration in assessing the seriousness of the breach in relation to 5 March 2019 meeting.

5.2.9 Whilst the nature of any sanction is a matter for the Case Tribunal, the purpose of the sanction is to provide a disciplinary response to an individual member's breach of the Code; to place the misconduct and appropriate sanction on public record; to deter future misconduct on the part of the individual and others; to promote a culture of compliance across the relevant authorities; to foster public confidence in local democracy.

5.2.10 Having regard to the breaches found, a 'no action' decision would not be appropriate and a disciplinary response is merited. The breaches took place over a period of time were not isolated events.

5.2.11 The Ombudsman notes that the Respondent has indicated that he is now more familiar with prejudicial interests and would take a different approach if placed in the same situation, but the Ombudsman is disappointed to note that this recognition was not made during the course of the investigation, including when presented with the proposed findings in the draft report. No such hindsight appears to have been offered in respect of the meeting of 5 March 2019.

5.2.12 The Ombudsman noted the protestations of regret in the Respondent's submission of 27th of November 2020, but suggested that such protestations might have greater force if the Respondent was clearly conceding breaches of the Code. *"It does not sit easily in the mouth of the Respondent to on the one hand deny the breaches and on other state that if there were breaches he genuinely regrets them."*

5.2.13 It is submitted that any sanction that a Case Tribunal is inclined to impose, needs to be proportionate to deter such future action as may be found to be in breach, recognising the Respondent's position of seniority and influence, as Leader of the Council.

5.2.14 The Ombudsman suggested the following mitigating factors. That the Respondent cooperated with the investigation and the APW; that he was a relatively new member at the time of the offence; that he may in part have been motivated to attend the inter-agency meeting of 15th of August 2018 based on concerns for his community; his recent recognition and understanding of the context of what constitutes a prejudicial interest, albeit this was at a late stage in the proceedings. The Ombudsman also acknowledged the submissions made on the Respondent's behalf as to his commitment to the authority and his work with the Improvement and Assurance Board.

5.2.15 The Ombudsman suggested the following aggravating factors are relevant. The Respondent, although a relatively newly elected member, was an experienced public servant who works at a senior management level within the Police force; the Respondent is the Leader of the Council and in a position of seniority and had a personal responsibility to understand his role. He had a duty to understand his obligations under the Code and the position of Leader is highly influential and sets the culture of the standards of conduct which are to be expected/tolerated within the Council.

5.2.16 Further aggravating factors are that the Respondent continues to demonstrate a lack of understanding or acceptance of his misconduct and any consequences of it, in respect of the 5th March meeting; the Respondent has sought to blame the former Chief Executive for the Respondent's actions at the 5th March meeting; the number of breaches found; deliberately or recklessly ignoring advice from the Monitoring Officer.

5.2.17 The Ombudsman submitted that the breaches do not warrant a section of disqualification at the highest end of the spectrum available to the Case Tribunal, but that any sanction imposed should fulfil the purpose of the sanctions regime and remind the Respondent and others within the authority about the importance of their obligations under the Code. A Sanction is in the public interest as a means of maintaining public confidence in local democracy and transparency in council business.

5.2.18 There is a need to balance the seriousness of the breaches identified with the necessity to ensure the public have the right to local representation, and the need to maintain public confidence in elected members. The Ombudsman submits that the Council has a Deputy Leader and the ward served by the Respondent has two other independent members to attend to ward matters, thereby mitigating any prejudice caused in order to achieve the purposes of the sanctions regime.

### **5.3 Case Tribunal's Decision**

5.3.1 The Case Tribunal considered all the facts of the case and in particular the number and nature of the breaches, the Ombudsman's submissions and the Respondent's submission in mitigation. It considered the sanctions guidance issued by the President under section 75(10) of the Local Government Act 2000 ("the Guidance").

5.3.2 The Case tribunal has followed the five-step process in the Guidance in order to determine sanction. The first task is to assess the seriousness of the breach. There were nine breaches of the Code found in the six allegations.

5.3.3 Looking at the proven breaches, in relation to the inter-agency meeting, failing to declare a personal or a prejudicial interest is a serious matter. The meeting is discussing a house that is next door to the Respondent's home and it is hard to justify this failure. The Respondent does not have a momentary lapse of thought, he stays throughout the meeting. He was hosting the meeting; he opened it and asked the first question. He not only failed to declare his personal and prejudicial interest but then proceeded to take part in the meeting. If, for example, he had failed to make the declaration of interests but then remained silent or he had been merely an observer then that would have mitigated the seriousness of the breach, but the Respondent was not capable of doing that.

5.3.4 The Respondent was advised that he had a prejudicial interest and should not attend but he made it clear that he was going to attend. In this context, the Monitoring Officer advised that if that was the case then he should play no part in the meeting save as facilitator. The Respondent had made it clear to the Monitoring Officer that he had heard her advice and that he needed to stand back but he was still convinced he should have been there. He felt that he should be there as a ward councillor notwithstanding the advice given and that there were two other ward councillors. The Ombudsman felt that there is limited mitigation for the Respondent's attendance owing to this concession by the Monitoring Officer, with which the Ombudsman disagreed.

5.3.5 The mitigation afforded by the Monitoring Officer's concession is limited. Whilst it may provide the Respondent with some mitigation for going to the meeting, it affords none for his speaking at the meeting and failing to declare his interests. In fact, it increases the seriousness of the breach because the Respondent attends at the meeting and in taking an active role, then proceeds to do the things that he has been advised not to do.

5.3.6 The Case Tribunal's view is that this was not a particularly complex issue and the Monitoring Officer's advice was that the Respondent had a clear prejudicial interest in relation to the property next door to his home and she gave clear advice that could not have been misinterpreted. It was not advice on some new or controversial area where there was room for error, but on a straightforward issue. In effect the Respondent said that he was going to attend the meeting anyway.

5.3.7 The Ombudsman's own guidance on the Code for members of Local Authorities in Wales [B.3a at 609/610] stresses the importance of members following advice given by an authority's officers, especially advice from the Chief Executive or Monitoring Officer where it is given under their statutory duties. The Ombudsman's guidance says "*I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so.*" The Case Tribunal do not consider that there were strong reasons for not following the Monitoring Officer's advice. The Case Tribunal has seen no evidence that the Respondent recorded his reasons for not following the advice.

5.3.8 The Sanctions Guidance at paragraph 37 says that “*Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority’s monitoring officer).....are all likely to be regarded as **very serious breaches.***” [Our emphasis]. The Respondent took exception to the Ombudsman’s use of the term ‘blatant disregard’, but it mirrors both the Guidance and the conduct of the Respondent in relation to the advice he was given regarding the prejudicial interest.

5.3.9 In relation to the meeting of the 5<sup>th</sup> March 2019, there was no attempt to abide by the member/officer protocol and the manner in which the Respondent conducted himself, with a degree of pre-planning against the former Chief Executive was a serious breach. The Case Tribunal does not however, have the evidence before it to be satisfied, on the balance of probabilities, that it was the Respondent’s conduct at that meeting that resulted in the former Chief Executive ultimately not returning to his post.

5.3.10 The second part of the process is to identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach and any consequences for any individual and the Council. The breaches of the Code that have been proven, and on the facts, found by the Case Tribunal, are serious. The tribunal considered whether no action would be appropriate but the sort of factors that would justify no action, as set out in the Guidance, do not apply here. The Respondent had suggested that a warning may be appropriate in the event of breaches of the Code being proven, but in the light of the seriousness of the breaches the tribunal does not agree.

5.3.11 The Case Tribunal considered that suspension was appropriate noting the contents of paragraphs 39.4 and 39.5 of the Guidance, in particular the reminder to tribunals that a suspension of less than a month is unlikely to meet the objectives of the sanctions regime and that the highest sanction available to local Standards Committees is six months suspension.

5.3.12 The next part of the process is to consider any relevant mitigating and aggravating factors and how these might affect the level of sanction under consideration.

#### **Mitigating factors.**

5.3.13 The tribunal noted the mitigating factors on the Respondent’s behalf and as conceded by the Ombudsman. The Case tribunal take particular note of the Respondent’s excellent record of public service with the police force and the extremely positive character reference supplied on his behalf from the former Chief Constable of South Wales Police, Mr Peter Vaughan, dated 23<sup>rd</sup> November 2020. He says of the Respondent; “*..he was a true professional who was committed to providing the best service to the public. He also had a reputation as being one of the best investigators in South Wales Police, I have to say he certainly matched up to this reputation..... For me to run a successful*

*organisation you need key people in key roles. Kevin was one of my top team and had a significant role to play in moving the organisation from being one of the poorest performing forces in Wales and England to one of the best..... The Northern Division which covers the area of Merthyr and Rhondda Cynon Taf had not been performing as well as I would have liked..... I promoted Kevin to Chief Superintendent of the Division, and he went on to be the longest serving and most effective Divisional Commander I had. In his time in the Division he made a huge difference, he reinvigorated the professionalism of his team yet ensured they were friendly and made a positive impact..... He was always engaging and expected the highest standards and positive results. Kevin is an individual who wears his heart on his sleeve and is passionate about making a difference. I have no hesitation in providing a positive character reference for an individual I regard so highly.” [Further Submissions pages 79/80].*

5.3.14 The tribunal take into account the Respondent's political inexperience as a relatively new member of the authority at the time of the breaches. The Respondent has also undertaken impressive work with the authority and is highly motivated to continue to work for the people of Merthyr Tydfil as noted in the Gilbert Report. He is working co-operatively with the new Chief Executive Ellis Cooper with whom he has an excellent professional relationship and who has provided two additional statements detailing the positive progress being made. [C.2 page 28-29, Further Submissions page 78].

5.3.15 The Respondent has cooperated fully and openly with the Ombudsman and the APW into this investigation and has signalled his willingness to attend future training. The breaches of the Code found by the tribunal do not involve dishonesty and the tribunal accept that the Respondent is motivated by a concern for the community that he serves. Since the events giving rise to the adjudication, the tribunal has not been provided with any other evidence of breaches of the Code. The breaches of the Code arose from two separate and time limited circumstances and in the tribunal's judgement, do not demonstrate a pattern of ongoing behaviour.

#### **Aggravating factors.**

5.3.16 The tribunal considered the potential aggravating factors within the Guidance, whilst noting that they are not exhaustive and found the following to be of application in the Respondent's case.

5.3.17 The Respondent was in a position of seniority and responsibility as Leader of the Council. Whilst he did not have a long record of political experience as an elected member, he did have a long record of public service with the police, in a senior position that was subject to professional standards and an ethical framework. Moreover, although the Respondent was in the unusual position of becoming elected Leader of the Council shortly after becoming elected as a ward Councillor for the first time, he signed his declaration of acceptance of office and undertaking to abide by the Code on 10<sup>th</sup> May 2017, and the breaches of the

Code took place sometime later in August 2018 and March 2019. As Leader, the Respondent had a responsibility to ensure that he was familiar with and understood the Code.

5.3.18 Whilst the Respondent did not entirely seek to blame the former Chief Executive for his own actions at the meeting on 5 March 2019, he repeatedly maintained that concerns about Mr Chapman's performance were justified and in the submissions on his behalf dated 9th of December 2020, he directs the tribunal to the various witnesses' own assessments of the complainant's failings, [ Further Submissions, page 87] and says that the complainant was not blameless here and that the criticisms directed against the complainant, aside from the appropriateness of the forum, were not unjustified.[Further Submissions, page 88]. This has been a consistent theme on the Respondent's part throughout. For example, in his reply to the APW to the Notice of Reference from the Ombudsman, the Respondent disputed the Ombudsman's findings that he failed to show respect and his consideration to the former Chief executive, saying " *The clear and consistent evidence, including that from the former Chief Executive's Deputy (now Interim Chief Executive) is that there was a reciprocity of challenge and that the foundation for C O'N's challenge (in terms of the former Chief Executive's conduct in office) was a fair one.*"

5.3.19 The tribunal finds the Respondent's approach to his conduct at the meeting on 5 March 2019 to be an aggravating factor. The Respondent has continued to dispute that he failed to show respect and consideration to the former Chief Executive and disputed that he breached the Code, throughout and including up to December 2020. The Respondent remains of the view that he did nothing wrong. This is clear from his interview and from the representations made on his behalf. The Respondent may well be right in stating that there was a reciprocity of challenge generally between himself and the former Chief Executive, and it is an undisputed fact that their relationship was strained and poor. However, the Respondent has continued to confuse the general tenor of their relationship with his specific behaviour at the meeting on 5 March 2019.

5.3.20 Contrary to the Respondent's assertions, there is no clear or consistent evidence, to use the Respondent's term, that there was any 'reciprocity of challenge' **at the meeting on 5 March 2019**. Whatever the background to the relationship between the Respondent and Mr Chapman, there is no suggestion from any witness (including the Respondent himself) that the latter behaved in any way improperly at the meeting on 5 March 2019. The thrust of the Respondent's evidence and submissions is that because he had genuine concerns about the performance of the former Chief Executive, that he was entitled to raise those concerns in whatever way he considered appropriate, irrespective of whether his approach breached the officer/member protocol and/or the Code.

5.3.21 The Listing Direction in this case, dated 6<sup>th</sup> November 2020 included in the undisputed facts that the Respondent did not give the former Chief Executive,

the former Deputy Chief Executive or the Monitoring Officer, any indication that he intended to raise the former Chief Executive's performance at the meeting on 5 March 2019 and that the Respondent did not follow the Member Code of Conduct Protocol for the authority paragraph 2.8, in the manner in which he raised his concerns at the meeting. These facts remained undisputed and yet the Respondent continued to dispute that his behaviour was inappropriate and failed to show respect and consideration to the officer.

5.3.22 This tribunal is not required to determine whether the former Chief Executive's performance was deficient, nor could it do so, although it is noted that, as the Ombudsman says, this is certainly not accepted by the former Chief Executive. The tribunal does accept that the Respondent held genuine concerns about this, but his way of dealing with it constituted a clear breach of the Code and the officer/member protocol. The tribunal is concerned that, notwithstanding the Respondent saying that he now regrets the lack of notice that he gave to the former Chief Executive about his criticisms, he still does not accept that he breached the Code, repeating that the criticisms were justified.

5.3.23 It would have been a simple matter for the Respondent to accept that he breached the Code and the Protocol in his conduct at the meeting on the 5<sup>th</sup> March 2019 and to assert that if he were in a similar position again, he recognises that they must both be followed and that it would not be appropriate to raise performance concerns in front of subordinates without warning. He does none of these things, preferring to repeat that his criticisms were justified. Again, it is to prevent precisely the sort of conduct exhibited by the Respondent at the meeting of the 5<sup>th</sup> March 2019, that the Code and the protocol exist. It is simply not acceptable for the Respondent, particularly as the Leader of the Council, to in effect assert that having justifiable concerns means that the Code can be ignored.

5.3.24 The tribunal notes that the Respondent and witnesses favourable to him seek to impugn the independence of the Monitoring Officer's testimony and advice on the basis that she was said to have had a very close relationship with the former Chief Executive. Upon the written evidence available to this tribunal, such suggestions are baseless and entirely rejected. On the occasions noted earlier in this determination where there have been conflicting accounts, we have preferred the evidence of the Monitoring Officer.

5.3.25 In becoming involved in the business of the authority relating to the property next door to his home at Luther Lane, despite having a clear personal and prejudicial interest, the Respondent could be seen to benefit himself and his family, even accepting, as the Ombudsman did, that he was not motivated exclusively by personal gain and was also motivated by the interests of the community. The result of the withdrawal of Inspire and Support had a more beneficial impact on the Respondent and his family than other members of the community. The Ombudsman says that the discussions at the meeting on the inter-agency meeting of 15<sup>th</sup> August 2018 may have at the very least contributed to Inspire & Support's decision not to proceed. Whilst this is a reasonable

comment to make the tribunal note that the Respondent is correct when he says that there is no direct evidence from the company about this before us.

5.3.26 The aggravating factors in the Guidance include at (v) abuse or exploitation of a position of trust. In this regard the tribunal note that the Respondent confirmed in his interview that he had asked the builders at St David's who was employing them and could they get in touch with them, and that afternoon the manager (Melanie Dennis of Inspire & Support) was in his living room and the Respondent said that the first words that he said to her were that he had to identify himself. [B.2L page 413]. Whilst the Respondent says that he then has to step back from it because he was not sure if he had signed off any policies or strategies on it, he then goes on to say that he is going to ask her questions but 'as a resident'. It is clear that the Respondent had made his position as leader of the Council clear and then purported to ask questions as a resident, but he later held a pre-meeting in the Leader's office about this and then the inter-agency meeting in the authority's premises that he opened as Leader of the Council. Given that the Respondent should not have been at, or taking part in any such meeting, this, in the tribunal's judgement, on the facts, would have put more pressure on Inspire & Support than if the Respondent, as Leader, had stayed away from the business and the meeting.

5.3.27 Repeated breaches. There are a number of breaches associated with the inter-agency meeting. The Respondent should not have attended at all. However, once he does attend, he then participates, does not declare the personal and prejudicial interest and emails the next day in breach of the Code. Having said that, the breaches associated with the meeting have only happened once, within a 24-hour period as the Respondent submits, and there has been no repeat and no persistent pattern of behaviour in breach of the Code.

5.3.28 Lack of understanding or acceptance of the misconduct and any consequences. The Respondent has continued to submit that there was no prejudicial interest and no breach of the code in his behaviour at the meeting of 5<sup>th</sup> March 2019. This demonstrates a lack of understanding and acceptance of misconduct, and that the Respondent has not considered the consequences for the reputation of the authority if he is seen to be involved in the matter in which he has a clear prejudicial interest.

5.3.29 Deliberate conduct with little or no concern for the Code and deliberately or recklessly ignoring advice, training and/or warnings as to conduct. (Aggravating factors x and xi in the Guidance). These are factors here. The Respondent ignored the Monitoring Officer's advice that he had a prejudicial interest and made it clear that he was going to attend at the inter-agency meeting on the 15<sup>th</sup> August 2018. The Respondent did not like the advice given to him and persuaded the Monitoring Officer that he should go to the meeting. The Respondent recognises that the ultimate assessment of whether he has a prejudicial interest lies with himself. [Further Submissions page 75].



5.3.30 Aggravating factor xiv in the Guidance is a refusal to accept the facts despite clear evidence to the contrary. Here, the Respondent has continued to refuse to accept that he had a prejudicial interest and had refused to accept that his behaviour towards the former Chief Executive was a breach of the Code in the March 5<sup>th</sup> meeting. The Respondent submitted a further statement dated 13<sup>th</sup> August 2020 in which he said *"It is only from this investigation process and specific mentoring since the events that I understand what the phrase 'prejudicial interest' means and when it is relevant. If I found myself in a similar situation in the future, then I would certainly replace the term 'compromised' with the more legal phrase 'prejudicial interest' and quote it at every appropriate opportunity should similar situations arise."* [C.2 page 26 paragraph 7.] The tribunal finds that these are encouraging, but, at present, hollow sentiments.

5.3.31 There is force in the Ombudsman's comments cited at 5.2.12 above. The Respondent denies breaches and yet regrets them. Here the Respondent says that he has had specific mentoring and now understands the term prejudicial interest. Yet the Respondent has continued to deny and argue forcefully against the fact that he had a prejudicial interest throughout, up to and including his final submissions on 9<sup>th</sup> December 2020. The Case Tribunal therefore, notwithstanding his assertion, does not have evidence before it to demonstrate that the Respondent does understand what 'prejudicial interest' means. It is a serious aggravating factor that he continues to deny his clear prejudicial interest in the Luther Lane matter. As previously noted, the tribunal agrees with the Ombudsman's observation that *"It is difficult to imagine a factual scenario where the existence of a prejudicial interest ought to have been more obvious."* The Respondent at interview simply refused to accept that he had a prejudicial interest, and later sought to rely on a technical argument about decision making at meetings, which has not been accepted, to deny it.

5.3.32 The Monitoring Officer in her statement describes the attitude of the independent group, of which the Respondent is Leader, to advice: *"..... When either myself or Gareth gave advice they viewed this as a starting position rather than something they could not do or had to follow. In situations where the advice given, either by myself or Gareth, was opposed to something they wished to do, they would often seek alternative advice to the contrary."* [B.1j page 265 paragraph 4]. *"I have had several discussions with Councillor O'Neill over the last 2 years about the status of my advice and that he as a member must have "due regard" to it and should "give reasons" when making decisions which are contrary to it."* [B.1j page 266 paragraph 6] She adds *"...It became clear to me very quickly they did not necessarily want advice in order to understand the Council's processes and how to follow them but to an extent wanted to understand the processes in order to understand how to depart or find a way around them."* [B.1j page 268 paragraph 11]. She also said, talking of the difficult relationship between the Respondent and the former Chief Executive *"Councillor O'Neill is a person who does not, in my view, do well with being told that he cannot do something. In my experience as an officer, it is preferable to find a way to talk to*

*him to make him feel that he is being enabled do things.” [B.1] page 268 paragraph 11].*

5.3.33 The tribunal accept the Monitoring Officer’s evidence as reliable. Support for her evidence comes from the Respondent himself in his interview. Whilst talking of another matter (which does not form the basis of any allegations before the tribunal), where certain advice had been given to the Respondent by the Monitoring Officer, he says: “...*And it comes back to something key in relation to dealing with officers, is that we are... We must listen to their advice.. And have cognizance of it, but we don’t always have to act on it.*” [B.2L pages 488/489].

5.3.34 Whilst the tribunal has already noted and accepted the Respondent’s outstanding record of public service and achievement in the police force, it is clear that the Respondent has a high opinion of his own abilities and there remains an element of grandiosity in some of his pronouncements. For example, when discussing at interview the advice of the Monitoring Officer that he should not attend at the August 15<sup>th</sup> meeting because of his prejudicial interest he says “..*It sounds like a bit of conflict about me being there. Because the other thing I said, is **there are a lot of things I can bring to the table and nobody else can.** Because I’ve spoken to people and people have come to me. But I said, ‘I have to be there’, again as a ward councillor, that’s what I felt in the sense.*” [Our emphasis] [B.2L page 422]. The Investigating Officer asks the Respondent why the other ward councillors did not just attend the meeting and why the Respondent felt that he had to go and he replies “***I’m the one, do I make myself clear, I’m the one they come to. I’ve got certain skills, I’ve got certain.... You know, I’ve been a police officer for this town, they know me, if I say I’m going to do something, I’ll do it for them, I see it through the end, I don’t let go of it. Um, John is a very good local councillor, but he is what I call a foot soldier, he is a local councillor. Anything particularly strategic or difficult, John wouldn’t get involved. He, he hasn’t built up that skill set. When you look at Andrew, Andrew is also my financial lead. Um, Andrew runs his own business, you won’t get hold of Andrew like you’d get hold of me.***” [Our emphasis] [B.2L page 431].

5.3.35 The Respondent says that members of the public may go to other representatives first, but they are told to go and speak to him. “*I don’t...I mean, again **it is often a conversation where I’ve had with Carys, turn them away, I, I can’t do that. How can I turn people away? Because people come to me about no end of things. I’ve built.... People have got confidence in me er, to deal with matters from both, this occupation and my other occupation. And it’s, it’s an easy to say, point them towards somebody else. So, you come to me, I don’t want this to sound arrogant, right, I don’t, you get gold service. I would not let you down. And I will stay with it to the end. I got complaints that have been with me for 3 years, I’m still with them, I’m still pursuing, it’s a long, drawn out matters,.... Some of the other guys haven’t got it, they wouldn’t stay with it. I’ve got a reputation anyway.***” [Our emphasis] [B.2L page 432].

5.3.36 Later in the interview, the Respondent, in talking about why he did not declare his interest in the e mail of the 16<sup>th</sup> August 2018 to Lisa Curtis Jones says *"I thought it was glaringly obvious, but I'd spoken to her so much about it, she knew. I'd made it very, very clear from day one, about my position, about, my, my interest in the matter. It's an ongoing thing for me, but there may be themes through this, about how you deal with issues that end up being close to you? Because if you can imagine, I coached for 40 years, er, karate. I played football, rugby, I boxed, I was a policeman in this town, there's not many people I don't know. So when people come to me with an interest, I know something about them. I might live by them. I might coach them. I might have arrested them, yeah. So this perspective of a prejudicial interest is a very difficult one for me. **Because actually the people who are most at risk come to me..... Because they come to me because everybody else has failed them. This wouldn't be resolved by anybody else.** Our team had to go for it, everybody else has dropped out of it. And, actually the good that's come out of it, we've now got two houses that we are providing a service for, well they wouldn't have done before, and we got another one on the way. So, out of maybe a bad idea, that wasn't badly.... was, wasn't well-managed, we've turned it round."* [our emphasis] [B.2L page 446] Later when asked if he had used his position improperly to gain an advantage for himself or others in the context of the Luther Lane property he says *"Absolutely not. I gained advantage for all those involved."* [B.2L page 545].

5.3.37 There is a clear tone of individual exceptionalism and self-importance in the foregoing statements made by the Respondent at interview, which are entirely consistent with the Monitoring Officer's evidence about his attitude to advice. They fortify the tribunal's view that he has his own views and has refused to accept the facts despite clear evidence to the contrary, an aggravating factor. It may well be the case that the qualities that made him a successful high ranking police officer, making pressured operational decisions, need tempering in order to be used to best advantage in the political arena.

5.3.38 The tribunal found that the Respondent's actions have brought the office and the authority into disrepute.

**5.4** The fourth part of the process is to ensure that the sanction achieves an appropriate effect in terms of the purpose of the sanctions regime. The public interest is served by upholding the standards of conduct in public life and maintaining confidence in local democracy. The Case Tribunal have considered the chosen sanction of suspension against previous decisions of the APW. The case tribunal note that in the case of APW/002/2018-019/CT, 20<sup>th</sup> November 2019, the Respondent was suspended for four months for five breaches of the Code in relation to two allegations which he admitted and did not contest the facts before that Case tribunal. In APW/001/2019-020/CT the Respondent was suspended for three months for breaches of the Code and in APW/003/2017-018/CT the Respondent was suspended for two months for breaches of the Code in the content of three emails. The case tribunal has considered other older

decisions of the APW for example APW/002/2014-15/CT where the Respondent was suspended for three months for two breaches of the Code.

**5.5** The Case Tribunal note that there is a Deputy Leader of the authority and two other ward councillors, who with the Council's officers, and having been aware of these proceedings for some time, are able to continue with the work of the authority and to represent the interests of the Respondent's constituents.

**5.6** The Case tribunal determine that for the breaches of the Code proved and found in this case, that the starting point would be suspension for nine months. However, having taken into account the mitigating and aggravating factors, and in particular the Respondent's exemplary character witness, long record of public service, and relative inexperience as a Councillor and Leader, the Case Tribunal concluded by unanimous decision that Councillor O'Neill **should be suspended from acting as a member of the Relevant Authority for a period of seven months or, if shorter, the remainder of his term of office from the date of the decision notice.**

**5.7** The Relevant Authority and its Standards Committee are notified accordingly.

**5.8** The Respondent has the right to seek the permission of the High Court to appeal the above decision. A person considering an appeal is advised to take independent legal advice about how to appeal.

## **6. CASE TRIBUNAL RECOMMENDATIONS**

**6.1** The Case Tribunal makes the following recommendation to the authority;

**6.1.1** That the Monitoring Officer or their delegate provide further training to the Respondent on the Code of Conduct, the meaning of 'prejudicial interests' and the approach to be taken to, and the status of, the advice of the Monitoring Officer. Such training to be undertaken within one month of the Respondent returning to his post following the service of his suspension.

Signed R. Payne

Date 29<sup>th</sup> January 2021

Richard Payne  
Chairperson of the Case Tribunal

S. Hurds  
Panel Member

H. E Jones  
Panel Member



## **RHONDDA CYNON TAF**

### **RHONDA CYNON TAF COUNTY BOROUGH COUNCIL**

#### **STANDARDS COMMITTEE**

**19 MARCH 2021**

### **UPDATE ON TOWN & COMMUNITY COUNCIL USE OF THEIR LOCAL RESOLUTION PROTOCOLS**

#### **REPORT OF THE MONITORING OFFICER**

#### **1. PURPOSE OF THE REPORT**

- 1.1 To provide Members with an update on Town & Community Council's use of their Local Resolution Protocol.

#### **2. RECOMMENDATIONS**

- 2.1 That the Committee notes the information contained in the report and determines whether any action is required in response to it.

#### **3. BACKGROUND**

- 3.1 As Members will be aware during the last several years Town & Community Council's within Rhondda Cynon Taf have adopted local resolution protocols for dealing with low level member on member complaints that arise.
- 3.2 Prior to their adoption the Public Services Ombudsman for Wales (PSOW) had been concerned about the growing number of, generally, low level complaints being made under the Code.
- 3.3 The PSOW's guidance on the Code of Conduct for Community and Town Councils encourages the use of local resolution for low level complaints. To support that process One Voice Wales produced a template protocol, which is relatively simple in nature and which could be adapted and adopted as necessary.
- 3.4 The nature of the protocol means it will only work where both parties try to make it work. Failure to cooperate might therefore be a factor in favour of referral to the PSOW for formal investigation.
- 3.5 The procedure is intended for use where complaints are low level and have been made by an officer (not the clerk) or another member. Serious complaints, or those made by the clerk or a member of the public are recommended for referral to the PSOW.

3.6 The simple nature of the document does mean that some flexibility and a willingness to make the process work is required. Experience with our own local protocol indicates that it works best with willing participants as well. If one party refuses to cooperate then it is still open, and perhaps preferable, to refer the matter to the PSOW.

**4. USE OF THE LOCAL RESOLUTION PROTOCOL DURING THE PERIOD 1<sup>ST</sup> JANUARY 2020 – 28<sup>TH</sup> FEBRUARY 2021**

4.1 In early March we undertook a survey of all Town & Community Councils and asked the Clerk to respond to the following questions (where applicable):

- 1) *Please confirm whether you have received any complaints made under the Protocol during the period 1<sup>st</sup> Jan 2020 – 28<sup>th</sup> Feb 2021? Yes/ No.*
- 2) *If Yes, please provide details of the nature of each complaint and allegation(s) being made – please anonymise as necessary and complete Q3 -5 for each complaint as appropriate.*
- 3) *Please confirm for each complaint whether it was able to be resolved informally? If yes, what was the outcome of the informal resolution reached?*
- 4) *If the complaint was not able to be resolved informally did it proceed to the formal resolution part of the Protocol?*
- 5) *If any complaint reached the formal resolution part of the Protocol what was the outcome of that process?*
- 6) *Were any complaints originally considered under the Protocol subsequently escalated to the Public Services Ombudsman for Wales? Yes/No*

*Please also provide any general observations or comments you have on the operation of the Protocol during the relevant period. All observations and comments will be anonymised when reported back to the Standards Committee.*

4.2 I am pleased to report that out of the twelve Town & Community Councils 10 reported they had received no complaints under the protocol during the reporting period and the Clerks raised no other issues in respect of its operation.

4.3 One Community Council reported they had an issue which soon escalated from an original low-level member on member type complaint to a wider complaint which is the subject of an ongoing complaint to the PSOW. The local resolution protocol was therefore not used as a result.

4.4 A second Community Council confirmed it had received three complaints under the protocol all received in the same month. The complaints covered issues with comments made by a member about other members on social media, comments made at a meeting by a member and a claim that a member had published false allegations about other members.

None of the complaints were resolved informally and an issue was raised as to the constitution of the panel to conduct the hearing under the protocol. Advice was therefore sought from the Ombudsman's Office who confirmed the make-up of the complaints panel was satisfactory and did not need to be changed. None of the complaints have since progressed through the formal

process to date and the Clerk considers it is no longer in the public interest for these to be pursued given the passage of time.

- 4.5 Several Clerks have also indicated they would welcome a meeting with myself as Monitoring Officer to discuss standards and code of conduct issues generally. I think this is a sensible way forward particularly in light of local elections in being held next May when historically there is an increase in complaints prior to such elections.

**5. LEGAL IMPLICATIONS**

- 5.1 There are no legal implications arising from this report.

**6. FINANCIAL AND RESOURCE IMPLICATIONS**

- 6.1 There are no financial implications arising from this report.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**19 MARCH 2021**

**REPORT OF THE MONITORING OFFICER**

**Background Papers:** Freestanding matter

**Contact:** Mr Andy Wilkins – Monitoring Officer (and Director of Legal Services)





## **RHONDDA CYNON TAF**

### **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

#### **STANDARDS COMMITTEE**

**19 MARCH 2021**

### **PUBLIC SERVICES OMBUDSMAN FOR WALES – CONSULTATION ON REVISED CODE OF CONDUCT GUIDANCE FOR MEMBERS OF PRINCIPAL COUNCILS AND COMMUNITY & TOWN COUNCILS**

#### **REPORT OF THE MONITORING OFFICER**

#### **1. PURPOSE OF REPORT**

To inform Members of the consultation initiated by the Public Services Ombudsman for Wales in respect of new draft guidance on the Members' Code of Conduct for both Principal Councils and Community and Town Councils and invite any comments to be provided in response to that consultation.

#### **2. RECOMMENDATION**

2.1 The Committee is recommended to:

2.1.1 consider the Ombudsman's revised draft guidance on the Members' Code of Conduct for (i) Members of Principal Councils; and (ii) Members of Town and Community Councils (attached as Appendix A and B respectively);

2.1.2 provide any comments in response to the consultation; and

2.1.3 request the Monitoring Officer respond to the consultation on behalf of the Committee.

#### **3. BACKGROUND**

3.1 Under section 68 of the Local Government Act 2000, the Public Services Ombudsman for Wales ('the Ombudsman') may issue guidance to relevant authorities on matters relating to the conduct of their members and co-opted members. Under this statutory power, the Ombudsman has issued two separate sets of guidance on the Members' Code of Conduct – one for Members of Principal Councils and another for Members of Town and Community Councils, intended to help Members to understand their obligations under the Code. The Ombudsman's guidance was last updated in 2016.

3.2 The Ombudsman has initiated a consultation on revised draft guidance for:

(i) Members of Principal Councils and (ii) Members of Town and Community Councils. These are attached at Appendix A and B respectively. The deadline for consultation responses in respect of both sets of guidance is 21st March 2021.

- 3.3 The revised draft guidance outlines Members' duties under the Code and explains the test applied by the Ombudsman when deciding whether to investigate an alleged breach of the Code of Conduct. It also includes examples drawn from cases considered by the Ombudsman, local standards committees and the Adjudication Panel for Wales and reflects on issues of concern and recent trends.
- 3.4 The separate guidance for Members of Town and Community Councils is tailored to the different nature of the role that community councillors undertake in their communities.
- 3.5 The changes to both sets of guidance do not fundamentally alter current advice on the meaning of the Code of Conduct. The revised guidance seeks to improve wording to aid clarity, place greater emphasis on key messages (e.g. through the use of bold text) and provides fresh examples from real life of where the Code has been breached.
- 3.6 The principle changes appear to be:
- a. the Ombudsman has expanded the explanation of the two stage test applied to decide whether to investigate a complaint;
  - b. Slightly clearer and more emphatic guidance on freedom of speech as it effects the requirement to treat people with respect, the prohibition on bullying and disrepute; and
  - c. the guidance on what to do if one has a personal interest is expanded and more explicit.

Whilst most changes are small, they do add clarity and/or emphasis to the guidance. The changes appear to make the guidance easier to follow

- 3.7 The Committee is invited to consider the two separate sets of revised draft guidance on the Members' Code of Conduct issued by the Ombudsman and provide any comments to be given in response to the consultation.

#### **4. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

#### **5. LEGAL IMPLICATIONS**

Relevant legal provisions are set out in the body of the report.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**STANDARDS COMMITTEE**

**19 MARCH 2021**

**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

**Freestanding Matter**

**Contact:** Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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# **The Code of Conduct**

## for members of local authorities in Wales

**Guidance from the  
Public Services Ombudsman for Wales**  
for members of county borough councils,  
fire and recue authorities,  
national park authorities and  
police and crime panels

## Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales. I have issued separate guidance for members of community and town councils.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.<sup>2</sup>

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

The guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclose and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted downloading it from your authority’s website or contacting your Monitoring Officer.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Monitoring Officer and to make a decision as to the most suitable course of action.

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<sup>1</sup> In legislation, ‘community council’ includes a ‘town council’.

<sup>2</sup> Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging. As before, it excludes guidance which only relates to community and town councillors, as this is included in the separate guidance I have issued for such councillors.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the quarterly “Code of Conduct Casebook”, which is on my website at [www.ombudsman.wales](http://www.ombudsman.wales)


I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.

As a member, you will be offered training on the Code, from a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements for dealing with ‘member versus member’ complaints, which have proved very effective as a means of resolving many of these cases.

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in

these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

We should continue to work collaboratively to drive up standards in public life and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities.

A handwritten signature in black ink, appearing to read 'Nick Bennett', enclosed within a thin black rectangular border.

Nick Bennett  
Public Services Ombudsman for Wales  
xxxxx 2021



This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed members of:

- county and county borough councils
- fire and rescue authorities
- national park authorities
- police and crime panels in Wales

## Acknowledgement

I would like to thank the legal services department of Ceredigion County Council for the use of its flowchart on interests which are appended to this guidance.

Separate guidance is available for members of community and town councils.

First published April 2010. This edition published xxxx 2021.

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## 1 Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It 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 a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>3</sup> which all relevant authorities were required to adopt.<sup>4</sup>

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>5</sup>

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils<sup>6</sup> are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees.

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<sup>3</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>5</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

<sup>6</sup> A county or county borough council in Wales

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

### Investigations: Assessing the Public Interest

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

#### **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, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- 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 (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the 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.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two-stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

### Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup> In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee

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<sup>7</sup> Calver, R (on the application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).

that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician’s right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook', which summarises cases I have investigated, is available on my website at [www.ombudsman.wales](http://www.ombudsman.wales).

### Local Resolution Process

Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the Council's Monitoring Officer for consideration under this process, in the first instance.

In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.



When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.

Local resolution can also play an important role within community 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. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

### Standards Committee

The Standards Committee established by your authority is responsible for promoting and maintaining high standards of conduct by the authority's members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or your authority's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the authority. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in

standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.

### Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an ‘interim case tribunal’, which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an ‘appeals tribunal’ is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).

Further information about the role and procedures of the Adjudication Panel and its tribunals can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Principles

The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council’s resources and equality and respect for others.

Members elected to local authorities give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your authority, and which will give your communities confidence in the way that your authority is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>8</sup> and are replicated below.

### **1. Selflessness**

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on themselves or to improperly confer an advantage or disadvantage on others.

### **2. Honesty**

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

### **3. Integrity and Propriety**

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

### **4. Duty to Uphold the Law**

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

### **5. Stewardship**

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

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<sup>8</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2002 No. 2276 (W.166)

### **6. Objectivity in Decision-making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

### **7. Equality and Respect**

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

### **8. Openness**

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

### **9. Accountability**

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

### **10. Leadership**

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Model Code of Conduct, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**.

### Deciding when the Code applies to you See paragraphs 2 and 3

Consider conduct in your  
public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your authority. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your authority, some of the provisions of the Code apply to you at all times.

When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time. Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

### When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your authority (paragraph 2(1)(a)-(c)).

- **At any time**, if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

**Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)). When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

**If you are acting as a representative of your authority on another body, for example on the board of a housing association, which does not have a code of conduct relating to its members, you must comply with your authority's own Code** unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at [www.wlga.wales](http://www.wlga.wales) or by calling 029 2046 8600.

If you are nominated by your authority as the director of a company (a stock transfer housing association for example) you are obliged to act in the best interests of the company. If it has a code of conduct for its directors, you must abide by it. If it does not, you must comply with your authority's Code, except on the rare occasions where it conflicts with any legal obligations the company may have.

If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

### **Example 1 – compliance with another body's code (paragraph 3(a))**

A member was nominated by a County Borough Council to serve as a board member of a stock transfer housing association. The Chief Executive of the housing association copied all board members into a confidential email to the Chief Executive of the Council. The Councillor admitted sending the email to the local press and said that he had done so because he felt that his duty as a councillor over-rode his duty as a board member of the housing association. The Councillor was found to have breached paragraph 3(a) of the Council's Code by disclosing the e-mail in breach of the board's own code of conduct. He was also found to have brought his office and authority into disrepute by making a misleading statement that "he recently had to withdraw" from the board of the housing association when he had been removed with immediate effect for the serious breach of confidentiality.

### **Example 2 – official capacity and misuse of resources (paragraphs 2 and 7)**

An online poll about a person accused of murder which contained inappropriate language was set up using a member's council-provided laptop, internet access and his council email address. The member said he personally had not set up the poll. The Adjudication Panel found that, as the Council had provided him with the laptop, he was responsible for it and its proper use. He also made disparaging comments about housing benefit claimants on his Facebook page when responding to a request for advice in his councillor role. The Adjudication Panel rejected his assertion that the comments had been made in a personal capacity, finding that the member had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.



### **Example 3 – official capacity (paragraph 2)**

A member had sent, and encouraged an officer of the Council with whom he had a personal relationship to send, inappropriate social media messages, including messages of a sexual nature, during office hours. The Adjudication Panel rejected arguments that the member had been acting in an entirely personal capacity. It found that the member could not divorce himself from his role as the officer's quasi-employer and that, when sending or encouraging the officer to send the messages during working hours, he was acting in his official capacity.

## 2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

### Equality

See paragraph 4(a)

**You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

### **Example 4**

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### **Example 5**

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy and the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

### Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

**When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public, colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the ECHR provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

“Political” comments are not confined to those made within the Council chamber and, for example, include comments members may generally make on their authority’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

I may also decline to investigate a complaint where the member has raised “political” issues with officers. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example Chief Executives or Heads of Services, will also be expected to have a greater degree of robustness.

Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### Example 6

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code; and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack in some form or other on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR. The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

### Example 7

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out". The member was referred to the Adjudication Panel for Wales.

The Panel found that the member had breached paragraph 4(b) in that he had failed to show respect and consideration for others. It also found that his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

### Example 8

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing, the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

### Bullying and harassment See paragraph 4(c)

Consider your conduct  
from the other  
person's perspective

**You must not use any bullying behaviour or harass any person including other members, council officers or members of the public.**

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health. This can be contrasted with the legitimate challenges which a member can make in questioning policy or scrutinising performance. An example of this would be debates in the chamber about policy, or asking officers to explain the rationale for the professional opinions they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views.

When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) of the Code, very senior officers can be involved in robust discussion with members and be well placed to put their own point of view forcefully. The same is not true of more junior officers and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.

Local authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 9**

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so, as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to



use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

### Example 10

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

### Compromising the impartiality of officers of the authority See paragraph 4(d)

**You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council.** You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code. I would encourage you to adhere to any protocol developed by your authority that deals with relationships between members and officers.

### **Example 11**

The son and daughter-in-law of a member of a County Borough Council were neighbours of a family who were tenants of the Council. Complaints had been made about the family's conduct. The member contacted officers of the Council regarding the family's occupancy of the council property and its impact on his son's family on a number of occasions, sometimes outside office hours. The calls were made in his role as an elected member and he had direct access to officials because he was a member. He received a warning from the Deputy Monitoring Officer as to his conduct, which emphasised the powerful position elected members occupy when dealing with members of staff.

Despite this he continued to contact officers about the matter, including requesting an officer to visit his family "there and then" and accusing an officer of "tipping off" the family being complained about that noise monitoring equipment was being installed.

The Adjudication Panel for Wales found that the conduct of the member was a persistent course of conduct over a period of 6 months, intended to bring undue pressure upon council officers. It found that, through his actions, he had sought to compromise the impartiality of officers of the Council. It also found that the member had failed to show respect and consideration for others and that his actions amounted to harassment and he had used his position improperly to promote the interests of his own family. Given the accumulative nature of his dealings with officers and his making a false allegation that an officer had "tipped off" the family, he had also brought the office of member into disrepute.

### Example 12

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

### Disclosing confidential information

See paragraph 5(a)

**You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:**

- **you have the consent of the person authorised to give it**
- **you are required by law to do so.**

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked 'confidential'. On other occasions, this will not be the case, but you must not disclose them even if they are not marked as confidential. If you are in any doubt, always ask your Monitoring Officer.

As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. These reports have usually been assessed by the author as containing sensitive information, following expert legal advice. The sensitivity of the information may decline over time, but you are strongly urged to take proper legal advice before disclosing it. Similarly, legal advice, whether provided by external lawyers or your authority's in-house legal staff, is almost always covered by legal privilege and should not be disclosed.

I expect information provided to members during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

### **Example 13**

A member of a County Borough Council who sat on the Council's adoption panel disclosed to a third party details of a person who had applied to the panel to adopt a child and the outcome of the application. He could only have become aware of the information he disclosed by virtue of his membership of the panel. The Adjudication Panel found that the member had disclosed confidential information in breach of the Code.

### **Example 14**

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

### Preventing access to information

See paragraph 5(b)

**You must not prevent any person from accessing information which they are entitled to by law.**

This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Monitoring Officer.

Information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your authority may be required to release it in response to a request. If you do not provide the information to the relevant officer of your authority on request, you will be in breach of the Code.

Your authority needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to your authority's relevant officer to allow the authority to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

#### **Example 15**

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

### Disrepute See paragraph 6(1)(a)

Any conduct  
unbecoming of a member  
can constitute disrepute

**You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your authority as a whole. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer, as this may also constitute disrepute (see also paragraph 6(2)).

Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

You must also conduct yourself in an appropriate manner with others within the confines of a council's building, regardless of whether your conduct is likely to be in the public domain.

#### Example 16

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself by misrepresenting the purchase as being on behalf of the Council and his abusive behaviour towards the staff had brought the office of member into disrepute.

### Example 17

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

### Reporting criminal behaviour See paragraph 6(1)(b)

**The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your authority (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your authority's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your authority's Monitoring Officer.

### Reporting breaches of the Code See paragraph 6(1)(c)

**If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible.

Your Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your Monitoring Officer may suggest that the matter would be more appropriately dealt with through the authority's local resolution process.

In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach, I will use the two-stage test that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint, including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### **Vexatious complaints** See paragraph 6(1)(d)

**You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

You must not make complaints against other members, your authority's officers or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by



political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and, as I have explained, may also be a breach of the Code. You must report well-founded alleged breaches to your Monitoring Officer - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should therefore avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about, for example, when you may disagree with a member's approach to your authority's business or their role as member. Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

### Example 18

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

## Co-operating with investigations

See paragraph 6(2)

You must co-operate with an investigation when it is being conducted by me or by your Monitoring Officer using our statutory powers. Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and your Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, you are expected to give priority to their investigations to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be, a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

### Example 19

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales. During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### Using your position improperly See paragraph 7(a)

**You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

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<sup>9</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraphs 6(1)(a) and (b). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

### **Example 20**

A member of a County Council had requested that land in his ownership in Village A be included as suitable for development in the Council's Local Development Plan (LDP). When the Council was considering suitable settlement areas for inclusion in the LDP, officers recommended that land in the neighbouring village (Village B) be included in the draft plan instead. Despite having received very clear advice from the Council's Monitoring Officer on his prejudicial interest, the member emailed the Council's planning policy officer and outlined a number of arguments which he claimed favoured the inclusion of his land in Village A as opposed to the land in Village B. At the relevant time the draft plan had been disclosed to members of the Council on a confidential basis and had not been disclosed publicly.

The Adjudication Panel found that, by sending the email, the member had breached paragraph 7(a) of the Code by attempting to use his position improperly for his own advantage. At the hearing, he sought to apportion blame on the Council's Monitoring Officer for failing to advise and train him properly on the Code, when this clearly was not the case. His actions also brought his office and the Council into disrepute.

### **Example 21**

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this

amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

### Example 22

A member of a County Borough Council made representations to council officers on behalf of a constituent about matters relating to the purchase by the constituent of a parcel of Council-owned land through a tender process. This included the removal of a restrictive covenant which rendered the land of little value to the constituent given his intention to develop it. The member volunteered in evidence before the Council's Standards Committee that his involvement was a possible way of mitigating legal costs for his constituent. Throughout his involvement, the member failed to disclose that he had a close personal association with the constituent, who he had known for 40 years and regarded as a close personal friend who he saw almost daily. The Standards Committee found that the member had breached paragraph 7(a) (and other paragraphs) of the Code in that through his interventions he had sought to use his position improperly to confer an advantage upon and avoid a disadvantage for his friend. This would potentially create a disadvantage for any member of the public who might wish to express an interest in the land had it been on the open market (as the absence of the restriction would have required), especially the lower bidder in the original tender process.

### Using the authority's resources See sub-paragraphs 7(b)(i) – (iv)

**You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from council employees), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.

You must be familiar with the rules applying to the use of these resources made by your authority.

Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

### Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

**You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your authority, for example, your authority's Information Security Policy.

You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.

Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

### Example 23

A member of a County Council was found in breach of the Code for making improper use of his council-issued computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local

newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council's equipment in breach of the Code and had brought the office of member into disrepute.

### Example 24

A member of a County Borough Council was found by the Adjudication Panel to have breached the Code by using his council-issued mobile phone excessively for private purposes. Whilst limited personal use was permitted under the Council's IT policy, a bill in excess of £1000 was incurred in respect of private calls which the member had made.

### Reaching decisions objectively

See paragraph 8(a)

**When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and consider the issues objectively, having regard to any relevant advice of your authority's officers.** During the decision-making process, you must act fairly and take proper account of the public interest.

In some decisions, such as those taken by planning committees or where you are participating in the consideration of a ward matter, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

**Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

Section 78 of the Local Government (Wales) Measure 2011 prohibits a member of an overview or scrutiny committee meeting from voting on a question at a meeting if, before the meeting, the member has been given a party whip relating to the question.

In order for me to investigate complaints of “whipping” of votes by political groups, there must be written evidence or other corroborative evidence available of the whip. Suppositions based upon the voting patterns of particular groups will not be sufficient evidence of a whip.

### Considering advice provided to you and giving reasons See paragraph 8(b)

#### **You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your authority.**

You must have regard to all of the advice you receive from your authority’s officers, especially advice from the Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Legal Officer, where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. This is a complex area and there are provisions within other legislation which underpin it but, in general, it goes well beyond a requirement to simply consider and reject advice if it is not welcome.

I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so.

It is worth reflecting also that this places a considerable onus on statutory officers to consider their formal advice carefully, and again, where they believe it is likely to be contentious, to keep a record of it. There may be isolated cases where advice is given to a member which, when followed, leads to a breach of the Code. In investigating such cases, if the evidence suggests that there has been a breach, I would generally regard the flawed advice as a factor in mitigation, rather than as evidence that no breach occurred.

It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice.



If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected, but it is not confined to these.

As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.

In reaching decisions where the advice is not provided by the statutory officers, you should still have regard to the advice provided by officers and take it into account in reaching your decision. You may also wish to have regard to other advice you have received and, of course, to the position adopted by a political group of which you are a member. In some circumstances, such as planning decisions, you must not vote on the basis of a "whip" imposed by your group. In others, it is reasonable to do so but you should avoid having an entirely closed mind prior to a debate. Again, whatever the reasons for voting against officer advice, it is highly advisable to record them.

### **Example 25**

A member of a County Council who chaired a council meeting refused to allow the Council's Monitoring Officer to advise members during a debate about the Council's "Annual Letter" from the then Wales Audit Office. Also, when the Monitoring Officer did manage to intervene to express grave concerns about the way in which the proceedings were being conducted, the member failed to have regard to the limited advice the Monitoring Officer was allowed to offer and simply said that he "noted her comments".

The member was found to have breached paragraph 8(a)(iii) of the Code. The Adjudication Panel took into account the member's full apology and expressions of remorse for his behaviour and indicated that had the member not already accepted his wrongdoing it would have imposed a greater sanction than it did.

### Expenses

See paragraph 9(a)

**You need to follow the law and your authority's requirements in claiming expenses and allowances.** If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming, for example, for childcare.

### Example 26

A member of a County Borough Council was alleged to have used the Child/Dependent Care Allowance to pay his wife to look after their daughter. During the investigation, it transpired that he had paid his adult son (from a previous marriage) a regular weekly income to care for the child as and when required. The member was able to provide proof of the payments through receipts and cheque counterfoils. In view of this, there was no evidence of any failure on the part of the member to comply with the Code.

### Gifts and hospitality

See paragraph 9(b)

**It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your authority. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code.)

### 3 Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Monitoring Officer for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached two flowcharts at Appendix 1 and 2 which Ceredigion County Council's former Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.

Guidance on registering interests is at Section 4.

**Personal Interests**  
See paragraph 10

**Do you have a link or close connection to the item to be considered?**

**While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but there are other occasions, such as when speaking to your authority's officers about the matter concerned, when you may also need to do so.

Listed below are some questions that you should ask yourself when deciding if you have an interest:

### **Do I have a personal interest?**

You have a personal interest in any business of your authority, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area
5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
7. any land let by your authority to a firm in which you are a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your authority
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes
  - body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your authority's area
10. any land in your authority's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest; however, if in doubt, consult your Monitoring Officer.

### Matters affecting your well-being or financial position

If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward or, for members of authorities which do not have wards (for example, national parks), in your authority's area, you have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### What is “a body exercising functions of a public nature”?

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether a body meets that definition:

- Does that body carry out a public service?
- Is the body taking the place of local or central government in carrying out the function, for example, a care home with residents supported by social services?
- Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority, for example, a private company collecting refuse for the authority?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

Unless you answer ‘yes’ to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition are health bodies, council-owned companies exercising public functions and school governing bodies. If you need further information or specific advice on this matter, please contact your Monitoring Officer.

### What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

**Close personal associates include friends, relatives, business associates and those with whom you have been in dispute**

### Who is a close personal associate?

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Monitoring Officer.

### What if I belong to an authority without wards or electoral divisions?

If you are a member of an authority that does not have wards or electoral divisions, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you or one or more of your close personal associates, **more than** it

would affect other people in your authority's area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority's area.

### “Twin hatted” members

If you are a member of both a community council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

Obviously, if the planning application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 27

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public

perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### Example 28

A member of a County Borough Council made numerous representations to his Council's officers on behalf of a constituent who was involved in the purchase of Council-owned land that was being sold by way of a tender process. The member and constituent were long-standing close personal friends, having been acquainted for some 40 years. The constituent stood to gain financially from the member's intervention. The Adjudication Panel found that the member did not consider (as required by paragraph 10(1) of the Code) whether he had a 'personal interest' when he spoke, wrote and attended meetings about the land; and he did not disclose the existence and nature of the interest in breach of paragraph 11. The Panel found that the member's personal interest was so significant as also to be a 'prejudicial interest'. The Panel, therefore, found that the member also failed to comply with paragraph 14 of the Code, in that he should not have made oral or written representations or attended meetings to discuss the matter on behalf of his constituent.

### What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of or reasonably ought to be aware of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

### What to do when you have a personal interest See paragraph 11

**Once disclosed you can stay & participate if your interest is not prejudicial**

When you have a personal interest in any business of your authority, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.



If you are attending a **meeting**,<sup>10</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

**Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

If you are making a decision as part of an **executive or board**, you must make sure that the written record of that decision (for example, minutes of a cabinet meeting) includes details of your interest.

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<sup>10</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present (other than political group meetings), not just formal meetings of the authority. For example, it can include an informal meeting of a member and officer.

If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.

If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 29

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

## Prejudicial Interests

See paragraph 12

### Do I have a prejudicial interest?

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest and:

- the matter does not fall within one of the exempt categories of business (see below), or
- the exempt categories do not apply because the matter relates to a licensing or regulatory matter (see paragraph 12(3)).

### What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (for example, your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or electoral division affected by the decision (or authority, if your authority does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

### Does the matter fall within one of the exemptions? See paragraph 12(2)

You will not have a prejudicial interest if the business falls within one of a number of exemptions which are set out below.

The business relates to:

- another relevant authority (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school

- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school that child attends
- decisions about statutory sick pay, if you receive or are entitled to receive it from your
- authority
- an allowance, payment or pension for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

These exemptions will **not** apply where the business you are considering is about determining an approval, consent, license, permission or regulation (see paragraph 12(3)). I consider these descriptions to refer to a narrow category of decisions, such as granting planning consent and licensing decisions. A wider interpretation of approval, for example, would cover almost every aspect of your authority's business and was clearly not intended.

If one of the exemptions applies you are **not** regarded as having a prejudicial interest. You still must disclose your personal interest **but you are allowed to participate in the item under discussion.**

### Example 30

Two members of a County Borough Council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation, one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests. The other member had, despite receiving

advice on the declaration of interests, falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of paragraphs 11 and 14 of the Code to be serious ones.

### Example 31

A Standards Committee determined that the circumstances in which a member's membership of a local organisation had ended, resulting in an acrimonious and ongoing dispute between her and the organisation (including solicitors' letters for the recovery of a debt) constituted a close personal association. It found that the nature of this association meant that the member had a prejudicial interest and that she had failed to declare this and withdraw from numerous meetings when a financial donation to the organisation had been discussed.

### Overview and Scrutiny Committees See paragraph 13

**Please note: this section does not apply to fire and rescue authorities, and national park authorities.**

You have a prejudicial interest in any business before an overview and scrutiny committee or sub-committee meeting where both of the following requirements are met:

- that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees
- you were a member of that decision-making body at that time and you were present at the time the decision was made or action taken.

If the overview and scrutiny committee is checking a decision which you were involved in making, you may be called to attend the meeting to give evidence or answer questions on the matter, and you may do so provided it is acting under its statutory powers.

### What to do when you have a prejudicial interest See paragraph 14

You must declare your interest and withdraw from the room

If you have a prejudicial interest in any aspect of your authority's business, you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.

Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

**Key point:** If you have a prejudicial interest in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

**This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter,** by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

### Example 32

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### Do I have a statutory right to speak to the meeting?

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. However, in limited circumstances, legislation may provide you with a right to speak (for example, licensing hearings and standards hearings) which the Code recognises. If so, you will be allowed to exercise that right to speak. Your Monitoring Officer should be able to confirm whether this is relevant to your case.

### If I do not have a statutory right, will I be allowed to speak to the meeting?

The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.



If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. The Code also provides the right to submit written representations to the public meeting in these circumstances. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. You may not, however, take part in the discussion or observe the vote.

### When must I leave the place where the meeting is held?

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately when the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 33

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel

found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, you must leave the room during the debate and vote.

### What if I am summoned to attend a scrutiny committee to discuss business in which I have a prejudicial interest?

If you are asked to attend by the committee exercising its statutory powers, then you may attend and participate in the meeting.

#### Example 34

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her; the member having entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

### Executive or cabinet roles

**Please note: this section will not apply to fire and rescue authorities or national park authorities, unless in the latter case there are executive arrangements in place.**

If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority may make other arrangements as set out in sections 14-16 of the Local Government Act 2000. This means that the decision can be taken by an officer, another cabinet member, the full executive, or a committee of the executive.

Although you have a prejudicial interest in a matter, you may be able to make representations, answer questions and give evidence as long as a member of the public would have the same rights, but you are barred from decision-making about that matter individually or in cabinet.

You also should not participate in any early consideration of it, or exercise any delegated powers in relation to it. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence.

## Dispensations

### If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

Standards committees have powers under regulations made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

You can apply in writing to your authority's Standards Committee for a dispensation to speak and/or vote on a matter on one or more of the following grounds:

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion)
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business is being considered by an overview or scrutiny committee and you do not have a pecuniary interest
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your authority's area

- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority. If failure to grant a dispensation will result in an authority or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

## 4 Registration of Personal Interests

See paragraph 15

### Key points

All members of relevant authorities have to provide a record of their personal interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.

You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

The categories of personal interest set out in paragraph 10(2)(a) of the Code that you must register include:

- your job(s) or business(es)
- the name of your employer or people who have appointed you to work for them

- the name of any person who has made a payment to you in respect of your election or expenses you have incurred in carrying out your duties
- the name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company
- any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register
- any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use
- any other bodies to which you were elected, appointed or nominated by the authority
- your membership or position of control or management in:
  - any bodies exercising functions of a public nature (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union
  - any private club, society or association operating within your authority's area.

### **Sensitive information** See Paragraph 16

#### **Key points**

You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.

‘Sensitive information’ is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Monitoring Officer within 28 days asking them to include the information in the register.

### Gifts and hospitality See Paragraph 17

#### Key points

You must register any gifts or hospitality worth more than the amount specified by your authority that you receive in connection with your official duties as a member and the source of the gift or hospitality.

You must register the gift or hospitality and its source within 28 days of receiving it. Like other interests in your register of interests, you may have a **personal interest** in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person and then decide whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your authority’s gifts and hospitality policy.



### Is the gift or hospitality connected to my official duties as a member?

You should ask yourself, “would I have been given this if I was not a member of the authority?” If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.

You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

### What if I do not know the value of a gift or hospitality?

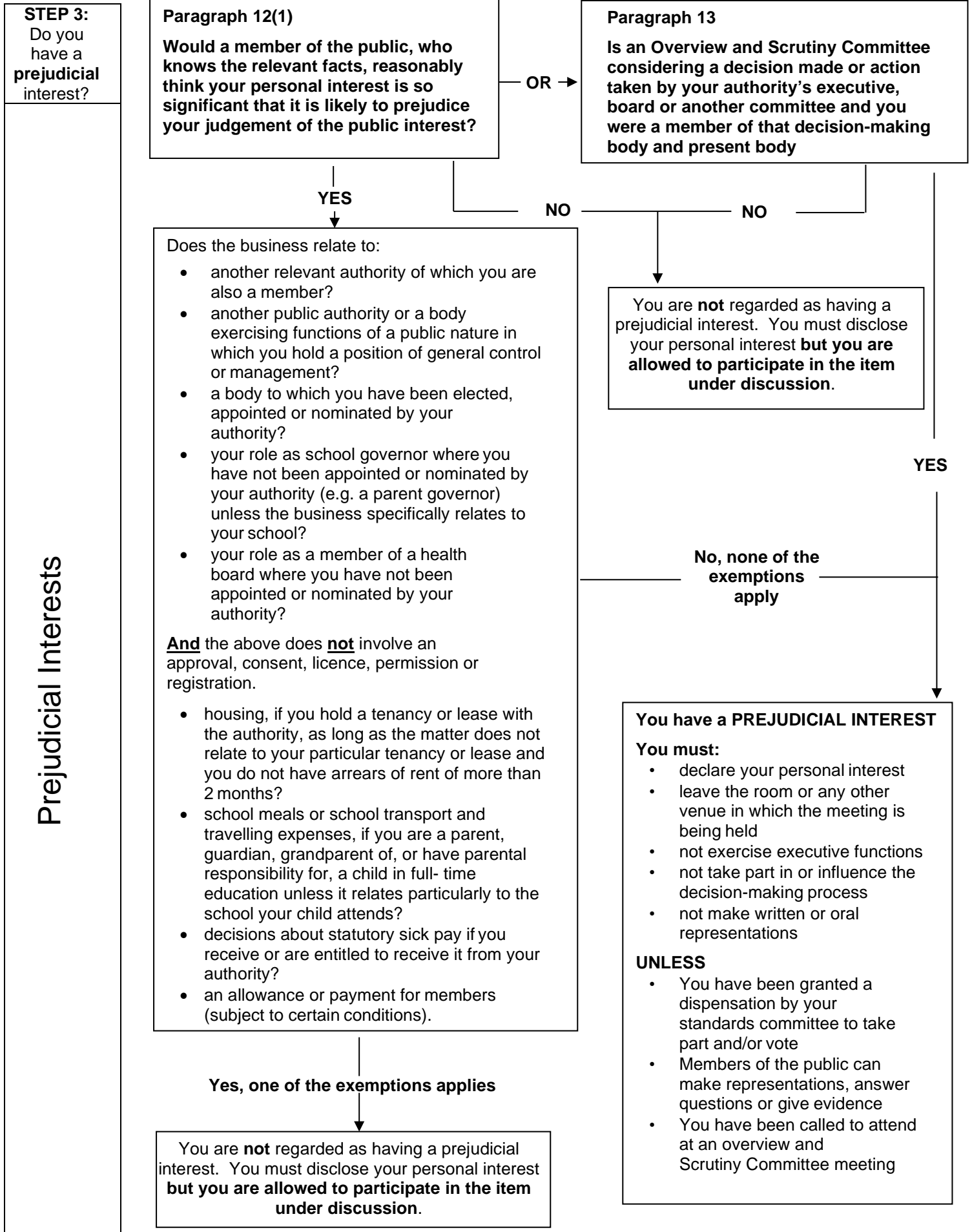
The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.

<p><b>STEP 1</b> Does the Code apply?</p>	<p><b>Are you:</b></p> <ul style="list-style-type: none"> <li>conducting the business of your authority?</li> <li>acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority?</li> <li>acting as your authority's appointee or nominee on any other body without its own code of conduct?</li> </ul>	
<p><b>STEP 2</b> Do you have a personal interest?</p>	<p>The Code <b>does</b> apply. Continue to Step 2.</p>	<p>The Code <b>does not</b> apply. No further action required.</p>
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Personal Interests</p>	<p><b>Paragraph 10(2)(a)</b> <b>Does the business relate to or is it likely to affect:</b></p> <ol style="list-style-type: none"> <li>your employment or business?</li> <li>your employer, firm or company?</li> <li>any person, other than your authority, who has paid towards your election or expenses as a member?</li> <li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li> <li>any contract that your authority makes with your company or a company in which you hold shares? (as described in 4)</li> <li>any land in which you have an interest?</li> <li>any land let by your authority to your company? (as described in 4)</li> <li>any body to which you have been elected or appointed by your authority?</li> <li>any:             <ul style="list-style-type: none"> <li>public authority or body exercising functions of a public nature?</li> <li>company, industrial and provident society, charity or body directed to charitable purposes?</li> <li>body whose main role is influencing public opinion or policy?</li> <li>trade union or professional association?</li> <li>private club, society or association operating in your authority's area in which you have membership or are in a position of general control or management? or</li> </ul> </li> <li>any land in your authority's area which you have a license to occupy for at least 28 days?</li> </ol>	<p><b>Paragraph 10(2)(c)</b> <b>Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area):</b></p> <ul style="list-style-type: none"> <li>your well-being or financial position?</li> <li>the well-being or financial position of any person who lives with you or with whom you have a close personal association?</li> <li>the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association?</li> <li>any company in which any person who lives with you or with whom you have a close personal association owns shares?</li> <li>any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.</li> </ul>
	<p><b>If YES, you have a PERSONAL INTEREST</b></p> <p><b>You must:</b></p> <ul style="list-style-type: none"> <li>declare your interest and the nature of that interest:             <ul style="list-style-type: none"> <li>at meetings</li> <li>when making written representations</li> <li>when making oral representations (and confirm it in writing within 14 days)</li> <li>consider if you have a prejudicial interest (see Appendix 2)</li> </ul> </li> </ul>	<p><b>If NO, you do not have a personal interest</b></p> <ul style="list-style-type: none"> <li>If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest</li> <li>Otherwise, <b>no further action is required</b></li> </ul>

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



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# **The Code of Conduct**

## for members of local authorities in Wales

**Guidance from the  
Public Services Ombudsman for Wales**  
for members of community and town councils

## Preface

This revised guide (published in xxxxx 2021) from me as Public Services Ombudsman for Wales provides an overview of the Model Code of Conduct (“the Code”) introduced in 2008 (as amended on 1 April 2016). It is intended to help you as a member to understand your obligations under the Code. The Code applies to all members and co-opted members (with voting rights) of county and county borough councils, community councils,<sup>1</sup> fire and rescue authorities, national park authorities and police and crime panels in Wales.

As an elected member, you are required to sign up to the Code as part of your declaration of acceptance of office. As a co-opted member, you must give a written undertaking to observe the Code when you take up office. The Code does not apply to the actions of authorities as a whole, or to the conduct of their officers and employees. There is a separate Code of Conduct applying to local government employees in Wales.<sup>2</sup>

This version of my guidance is aimed at community and town councillors (referred to throughout this guidance as community councillors). It differs in parts from my separate guidance to county councillors and members of other relevant authorities, as it recognises and is tailored to the different nature of the role that community councillors undertake in their communities.

It is important to recognise that the Code’s primary purpose is not to restrict the way in which you act as a member, rather it is intended to help and guide you in maintaining appropriate standards of conduct when serving your community. In turn, it provides reassurance to the public and helps build their trust in, and respect for, their local representatives.

Where councillors, clerk and chair of the council work together effectively as a team, they combine energies and skills to deliver real benefits to the community they serve. Good working relationships, mutual respect and an understanding of their different roles are vital. Conflict between these key players, especially during meetings in front of the press and public can damage the council and undermine its relationship with the people served by the council.

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<sup>1</sup> In legislation, ‘community council’ includes a ‘town council’.

<sup>2</sup> Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, SI 2001 No. 2280 (W.170)

This guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your Council by contacting your Clerk.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Clerk and to make a decision as to the most suitable course of action. The Monitoring Officer of the principal council<sup>3</sup> for the area will also be able to provide advice if the matter is complex and your Clerk is unable to do so.

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging.

The guidance includes examples drawn from actual cases considered by my office and decisions reached by local standards committees and the Adjudication Panel for Wales, which help bring the guidance to life. Some of the decisions in these cases may have been taken by my predecessor but, for ease of reference, I will refer to them as my own decisions. Further examples of recent cases can be seen in the “Code of Conduct Casebook”, which is on my website at [www.ombudsman.wales](http://www.ombudsman.wales)

I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office. I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular.


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<sup>3</sup> A county or county borough council in Wales

As a member you will be offered training on the Code whether from your Clerk, a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements that may be in place for dealing with complaints about their fellow members, which are proving an effective means of resolving many of these cases.

Despite a recent reduction in the number of complaints I have received about community councillors, I continue to be concerned about the number of low-level, tit-for-tat complaints which border on frivolity, or which are motivated by political rivalry or clashes of personality, rather than true Code of Conduct issues. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest. I take a very dim view of complaints of this nature and have, where appropriate, advised members that making a complaint which is frivolous, vexatious or malicious is itself a breach of the Code.

We should continue to work collaboratively to drive up standards and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities.



Nick Bennett  
Public Services Ombudsman for Wales

xxxxx 2021



This statutory guidance is issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000 for elected, co-opted and appointed members of community and town councils in Wales.

Separate guidance is available for elected, co-opted and appointed members of county councils, fire and rescue authorities, national park authorities and police and crime panels in Wales.

## **Acknowledgement**

I would like to thank the legal services department of Rhondda Cynon Taf County Borough Council for the use of its flowchart on interests.

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## 1 Introduction

The Local Government Act 2000 created a new ethical framework for local government in Wales. It 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 a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>4</sup> which all relevant authorities were required to adopt.<sup>5</sup>

For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>6</sup>

Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.

Standards committees of principal councils are required to assist members and co-opted members of community and town councils in their area to observe the Code, and to arrange for advice and training to be provided. Such training may be provided by Monitoring Officers or by One Voice Wales, the representative body for community and town councils in Wales. One Voice Wales has developed bespoke training on the Code tailored to the needs of community and town council members, which has been endorsed by local authority Monitoring Officers.

**I expect all members to attend training and take advice on conduct matters where it is offered.**

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<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>5</sup> Local Authorities (Model Code of Conduct) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>6</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

Whilst community councillors do not act on decision-making bodies such as planning committees, you will be called upon to take decisions on the allocation of funding from your precept and to offer guidance, drawing on your valuable local knowledge, to the County Council about the impact of planning applications. It is imperative, therefore, that you are fully aware of the Code and its implications for your decision-making and indeed, whether you should be involved in making a decision. In light of this, I recommend training on the Code for all new councillors as early in their term of office as possible and all councillors should undertake refresher training from time-to-time.

As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately, as a member, you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from your Council's Clerk or other officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

### **Investigations: Assessing the Public Interest**

It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test.

At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential stage is met, at the second stage I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below.

These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

### **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, or the member has been referred to a standards committee or the Adjudication Panel for Wales for previous misconduct
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- 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 (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the 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.

I have a wide discretion as to whether to begin or continue an investigation. I have revised the two-stage test adopted by my predecessor in order to provide greater clarity on how I will usually exercise my discretion and to secure a degree of consistency and certainty in the decisions that I reach.

## Legal Precedents

When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>7</sup>

In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local Standards Committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.

In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

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<sup>7</sup> Calver, R (on application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)

One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician's right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.

I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

Further guidance on the process I use for investigating complaints, including a factsheet on 'Assessing Public Interest' and the 'Code of Conduct Casebook,' which summarises cases I have investigated, is available on my website [www.ombudsman.wales](http://www.ombudsman.wales).

In this guidance I have tried, where possible, to use examples of cases which have been referred to me and which are relevant to community and town councils. Where this has not been possible, I have given examples of theoretical scenarios that indicate how the Code may be breached while you are undertaking your role.

### Local Resolution Process

Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints.

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. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils' to support councils in resolving minor disputes in a way which is proportionate to

the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

Typically, complaints which can be dealt with through local resolution will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am likely to refer the matter back to the Council's Clerk for consideration under the local resolution protocol, where this has been adopted by the Council. In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the Council and the Council's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Clerk to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.

When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.



## Standards Committee

The Standards Committee established by the Principal Council for your area is responsible for promoting and maintaining high standards of conduct by members. It provides advice and training for members and monitors the operation of the Code. The Committee also considers reports referred by me, or the principal council's Monitoring Officer, following the investigation of alleged breaches of the Code. The Standards Committee also discharges these functions in relation to community and town councils in its area.

Standards committees are made up of independent lay members and elected members of the principal council. The membership of a standards committee which discharges functions in relation to community and town councils must also include at least one community councillor.

When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant council's code of conduct, it may determine that:

- no action needs to be taken in respect of that failure
- the member or co-opted member should be censured, which takes the form of a public rebuke
- the member or co-opted member should be suspended or partially suspended from being a member of that council for a period not exceeding 6 months or, if shorter, the remainder of the member's term of office.

A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.

## Adjudication Panel for Wales

When I refer a case to the Adjudication Panel for Wales, its role is to establish a 'case tribunal' to determine whether a member has breached the Code and whether a sanction should be imposed. In addition, it will consider any appeals where permission has been obtained against the determination of a standards committee.

The powers available to a case tribunal when it determines that a member or co-opted member who is the subject of a report referred to it by me has failed to comply with the Code are:

- to disqualify the member from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to 5 years
- to suspend or partially suspend the member from being a member or co-opted member of the relevant authority concerned for up to 12 months
- to take no action in respect of the breach. In such cases the Panel may deem it appropriate to warn the member as to their future conduct. Where such a warning has been recorded, it is likely to be taken into account during any future hearing where the member is found again to have failed to follow the provisions of the Code.

During an investigation, I may issue an interim report to the President of the Adjudication Panel, if I consider it necessary and in the public interest to do so. An interim report will be considered by an 'interim case tribunal', which will decide whether it is appropriate to suspend, or partially suspend, the member pending the completion of my investigation.

The role of an 'appeals tribunal' is to review the determination of a standards committee that a member has breached the Code and / or any sanction imposed. An appeals tribunal may endorse any sanction imposed, or refer the matter back to the standards committee with a recommendation as to a different sanction; or it may overturn the decision that there has been a breach. However, an appeals tribunal cannot recommend a different sanction that was not available to the standards committee when making its determination.

Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).

### The Role of the Clerk

The Clerk is employed by your Council and undertakes a number of tasks including providing administrative support to the Council, advising on the development and implementation of policies and procedures and taking action to implement the Council's decisions. The Clerk has a complex role which may entail having to act as a project manager, personnel director, public relations officer and finance administrator. The Clerk acts in a supporting role for you and your fellow councillors and is the person you should turn to in the first instance if you need any advice. The best councils will have a Clerk and councillors who work as a team within a culture of mutual respect and consideration to serve their community. The Clerk is not just a secretary and is not at the beck and call of the Chair or individual members of the Council; the Clerk is answerable only to the Council as a whole. Whilst you may question the advice you are given by the Clerk, you must do so in a constructive and objective manner.

The Clerk will be able to advise councillors on relevant legislation, including matters relating to the Code and the Council's standing orders. The Clerk will work closely with the Chair of the Council to ensure that appropriate procedures are followed at meetings and that all necessary information is available to councillors so that they may make informed decisions. If necessary, Clerks may approach the relevant principal council's Monitoring Officer (see below) for advice.

The Clerk also plays an important role in facilitating the operation of the Model Local Resolution Protocol, where adopted, in conjunction with the Chair or Vice Chair of your Council.

The Clerk is an employee of the Council and is not required to abide by the Code. However, the Clerk and other Council employees are subject to a separate code of conduct set out in the 'Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001'. Under Section 82 of the Local Government Act 2000, the terms and conditions of appointment of the Council's employees are deemed to incorporate this Code. Any issues

regarding the performance of the Clerk or other employees are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of your Council's employees; this is a matter for the Council as the employer.

### The Role of the Monitoring Officer

The Monitoring Officer is employed by the Principal Council for the area. Among other things, the Monitoring Officer has an important role in ensuring the lawfulness and fairness of decision-making by the Principal Council. The Monitoring Officer also contributes to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee and members of the Council.

Monitoring Officers endeavour to provide support and guidance to community and town councils on matters of conduct, which may include the provision of training. However, this can have significant resource implications, particularly in areas with high numbers of community and town councils, and you should always ask your Clerk in the first instance for any guidance or information. The Monitoring Officer may be able to provide information if your Clerk is unavailable or you need assistance with a more complex query.

### The Principles

The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these principles which are designed to promote the highest possible standards. These principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report "Standards in Public Life". Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others.

Members of community and town councils give generously of their time and commitment for the benefit of their communities. The principles provide a framework for channelling your commitment in a way which will reflect well on you and your Council, and which will give your communities confidence in the way that your Council is governed.

The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. The current principles were set out in a statutory instrument<sup>8</sup> and are replicated below.

### **1. Selflessness**

Members must act solely in the public interest. They must never use their position as members to improperly confer an advantage on themselves or to improperly confer an advantage or disadvantage on others.

### **2. Honesty**

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest.

### **3. Integrity and Propriety**

Members must not put themselves in a position where their integrity is called into question by any financial or other obligation to individuals or organisations that might seek to influence them in the performance of their duties. Members must on all occasions avoid the appearance of such behaviour.

### **4. Duty to Uphold the Law**

Members must act to uphold the law and act on all occasions in accordance with the trust that the public has placed in them.

### **5. Stewardship**

In discharging their duties and responsibilities members must ensure that their authority's resources are used both lawfully and prudently.

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<sup>8</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2001 No. 2276 (W.166)

### **6. Objectivity in Decision-making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards and benefits, members must make decisions on merit. Whilst members must have regard to the professional advice of officers and may properly take account of the views of others, including their political groups, it is their responsibility to decide what view to take and, if appropriate, how to vote on any issue.

### **7. Equality and Respect**

Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others.

### **8. Openness**

Members must be as open as possible about all their actions and those of their authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law.

### **9. Accountability**

Members are accountable to the electorate and the public generally for their actions and for the way they carry out their responsibilities as a member. They must be prepared to submit themselves to such scrutiny as is appropriate to their responsibilities.

### **10. Leadership**

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the authority. They must respect the impartiality and integrity of the authority's statutory officers and its other employees.

The principles are not part of the Model Code of Conduct, and failure to comply with the Principles is not of itself, therefore, indicative of a breach of the Code. However, it is likely that a failure, for example, to adhere to the principle concerning equality and respect would constitute a breach of the requirements of paragraphs 4(a) and 4(b) of the Code in respect of equality of opportunity and respect.

In any event, the Principles offer a sound basis for your conduct in office and I encourage members to have regard to them at all times.

### Deciding when the Code applies to you See paragraphs 2 and 3

Consider conduct in your  
public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply to you when you are acting in your role as member or acting as a representative of your Council. However, the public rightly expects high standards of those who represent them in public office and your conduct in your private life will influence how you are perceived as a councillor. Consequently, as there may be circumstances in which your behaviour in your private life can impact on the reputation and integrity of your Council, some of the provisions of the Code apply to you at all times.

When reaching a decision as to whether the Code applies to you at a particular time, I will have regard to the particular circumstances and the nature of your conduct at that time.

Before considering your obligations under the Code you should first consider whether the Code applies and, if so, what provisions are pertinent.

### When does the Code apply?

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your Council (paragraph 2(1)(a)-(c)).

- **At any time**, if you conduct yourself in a manner which could reasonably be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your Council's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

**Where you act as a representative of your Council on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)). When you are nominated by your Council as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).

**If you are acting as a representative of your Council on another body, for example on an event committee, which does not have a code of conduct relating to its members, you must comply with your Council's own Code** unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).

If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at [www.wlga.wales](http://www.wlga.wales) or by calling 029 2046 8600.



If you are suspended from office for any reason, you must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while you are suspended.

### **Example 1**

A complaint was received that a councillor was intoxicated and behaving inappropriately at a street party. It was established that the councillor did not have to undertake any action on behalf of the Council at the party. In my view, therefore, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way only paragraph 6(1)(a) (disrepute) of the Code applied at the time. Whilst her behaviour may have been considered inappropriate by some, it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute, so was not indicative of a breach of paragraph 6(1)(a). I did not investigate this complaint.

### **Example 2**

Whilst acting in a personal capacity, a member of a county council was convicted of criminal offences relating to a failure to maintain accurate animal records and the disposal of animal carcasses. The Standards Committee determined that, due to the seriousness of the convictions, the member had brought the authority into disrepute in breach of paragraph 6(1)(a).

## 2 General obligations under the Code of Conduct

It is your responsibility to consider which provisions of the Code may apply at any given time and to act in accordance with your obligations under those provisions of the Code. I have referred to each paragraph below to provide you with some guidance on your general obligations.

### Equality

See paragraph 4(a)

**You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.** This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

You should at all times seek to avoid discrimination. There are four main forms of discrimination:

- Direct discrimination: treating people differently because of their gender, race, disability, sexual orientation, age or religion.
- Indirect discrimination: treatment which does not appear to differentiate between people because of their gender, race, disability, sexual orientation, age or religion, but which disproportionately disadvantages them.
- Harassment: engaging in unwanted conduct on the grounds of gender, race, disability, sexual orientation, age or religion, which violates another person's dignity or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation: treating a person less favourably because they have complained of discrimination, brought proceedings for discrimination, or been involved in complaining about or bringing proceedings for discrimination.

The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your Council may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.

You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your Council's fulfilment of its positive duties under equality laws. Such conduct may cause your Council to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.

You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your Council into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

### **Example 3**

A member of a County Council was a member of the Council's Recruitment Panel to appoint a new Chief Executive. Five applicants were shortlisted. After one candidate had finished his presentation and left the room the member said "good candidate, shame he's black".

The Adjudication Panel for Wales found that paragraph 4(a) of the Code had been breached and that the member had brought the office of member and his authority into disrepute, in breach of paragraph 6(1)(a) of the Code.

### **Example 4**

A member of a county borough council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found the failure to understand and appreciate the officer's right to privacy, the wide dissemination of private medical information and speculation about the progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) of the Code.

### Treating others with respect and consideration See paragraph 4(b)

Political comments can attract Article 10 rights

**When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.

Article 10 of the European Convention on Human Rights (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.

Your freedom of expression as a member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.

“Political” comments are not confined to those made within council meetings and, for example, include comments members may generally make on their Council’s policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

I may also decline to investigate a complaint where the member has raised “political” issues with officers, for example, the Clerk to a council. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, such as the Chief Executive of a Principal Council, will also be expected to have a greater degree of robustness. However, I am concerned about the number of complaints I have received which allege inappropriate

behaviour by some community councillors towards their Council's Clerk. Given the very scale and nature of community and town councils, there is a distinction to be made about the role and status of a Chief Executive or other senior officer in a Principal Council and that of a Clerk. I will consider carefully any complaints of alleged inappropriate behaviour by members towards Clerks, and will investigate those complaints which are supported by appropriate evidence that a member has gone beyond what might be regarded as reasonable challenge.

Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.

When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### **Example 5**

The Chair of a Community Council was found by a Standards Committee to have sent a number of emails containing inappropriate critical comments to another member of the Council. Two of the emails, including one which contained disparaging comments about the member's shower habits, were copied to other members of the Council. One email confirmed that the Chair had instructed the Clerk not to accept further emails from the member, because of his "sarcastic and belligerent remarks", until the member "had learned how to behave and conduct [himself] in a correct manner befitting a councillor." An email critical of the member was also sent by the Chair to a member of the public. The Standards Committee found the emails amounted to a failure to show respect and consideration to the other member, in breach of paragraph 4(b) of the Code, and had brought the Council into disrepute in breach of paragraph 6(1)(a).

An Appeal Tribunal of the Adjudication Panel for Wales found that two of the emails had been sent by the Chair in a personal rather than official capacity. The Tribunal considered all of the emails contained an attack, in some form or other, on the rights and reputation of the other member. However, the Tribunal found despite being confrontational, the comments were not abusive and were in the main political in nature and attracted the enhanced protection of Article 10 of the ECHR.

The Tribunal found that the email about the member's shower habits was intended to make light of the situation and had not been sent maliciously, although it acknowledged the member may have perceived it as such. The Tribunal also found that the ban on the member communicating with the Clerk was a genuine attempt to protect the Clerk from inappropriate emails by the member. The Standards Committee's decision was overturned and the sanction rescinded.

### **Example 6**

A member of a Town Council wrote a letter to a Deputy Minister of the then Welsh Assembly Government about an employee of a County Council, which he also copied to the Council. In the letter, the member questioned the employee's competence and motivation and he made a number of comments of a disparaging and personal nature about the employee and his associates. He raised the issue of homosexuality and referred to it as a "notorious disability" and that "homosexuality is only a demon which can be driven out".

The Adjudication Panel found that the member had breached paragraph 4(b) of the Code in that he had failed to show respect and consideration for others. It also found that his conduct had brought the office of member into disrepute in breach of paragraph 6(1)(a) of the Code.

### **Example 7**

The Chair of a Community Council raised a complaint at a meeting of the Council that he had not seen the text of a letter prior to it being issued (as previously agreed) in his name by the Clerk. The Chair was unhappy with the content of the letter when he eventually saw it. It was alleged that it was inappropriate for him to have raised the matter, without notice, in a public forum and in doing so he had upset and publicly humiliated the Clerk. A Standards Committee concluded that it was not inappropriate for the member to raise the issue in a public meeting so that his views could be publicly identified. The Standards Committee considered that his line of questioning and approach did not demonstrate a failure to show respect and consideration for the Clerk, but were intended to ensure that the Council's interests were protected and his concerns about the content of the letter were addressed. The Standards Committee, therefore, found no breach in relation to this aspect of the complaint.

(See paragraph 4(c) below for further examples)

## Bullying and harassment

See paragraph 4(c)

Consider your conduct  
from the other  
person's perspective

**You must not use any bullying behaviour or harass any person including other councillors, council officers (the Clerk or Proper Officer) or members of the public.**

Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

When considering allegations of bullying and harassment, I will consider both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied. Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

### Example 8

A Community Councillor disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. The Councillor used disrespectful and abusive language and behaved in a bullying and intimidating manner towards Council Civil Enforcement Officers on four occasions. He also sought to use his position as a councillor improperly in relation to a parking offence. A Standards Committee found that the Councillor had breached paragraph 4(c) of the Code, as he had pursued a course of conduct of threatening behaviour towards the County Council employees. The Standards Committee also established that the Councillor breached paragraphs 4(b), 7(a) and 6(1)(a) of the Code.

### Example 9

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) of the Code, very senior officers within principal councils can be involved in robust discussion with members and be well placed to put their own point of view forcefully. However, the same is not necessarily true of the Clerk in the context of community and town councils and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.



Your Council should have an appropriate mechanism for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.

The Adjudication Panel for Wales and standards committees have made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 10**

During the discussion of an unrelated matter, a member of a Community Council raised in a public meeting of the Council questions about the Clerk which were personal and focused on the Clerk's remuneration, expenses, hours worked and other occupations. This was in contravention of the Council's standing orders, which provided that any questions relating to, among other things, the appointment, conduct and remuneration of any person employed by the Council should not be considered until the Council had decided whether or not the press and public should be excluded.

A Standards Committee found that it was not appropriate for the member to have raised the matter, which should have been considered in private, in a public meeting. The Standards Committee concluded that the member had caused the Clerk embarrassment and upset and had demonstrated a lack of respect and consideration for her, in breach of paragraph 4(b) of the Code. The action by the member was not a sustained course of conduct, but a one-off event directed at an individual in a weaker position of power. As such, it could also reasonably be regarded as bullying, in breach of paragraph 4(c) of the Code.

### Example 11

A member of a County Council sent a critical email to an officer's Head of Service and copied it to the officer and a number of other members of the Council. In the email, the member described the officer as 'arrogant, lazy, mentally challenged and has been useless for years.' The member asked why the officer was not called to account and expressed the view that the officer was not worth his salary. The member sent a further email to the officer concerned and posted a 'Twitter' message on social media in which she referred to the investigation by my office in the following terms: 'My sin; ticking off LAZY officer Ugg!'. The impact of the emails led the officer to seek medical and other support and resulted in him taking sickness absence due to stress. The Adjudication Panel found the emails and Twitter message were completely unwarranted and would have adversely affected the officer's ability to carry out his role. The member had not previously raised the professionalism of the officer with senior management. The Panel found the member's conduct amounted to a breach of paragraph 4(b). Although falling short of repeated harassment, the Panel found the member's behaviour also amounted to deliberate bullying of the officer and a breach of paragraph 4(c) of the Code.

### Example 12

I received a complaint that a member of a Town Council had acted in a disrespectful and bullying manner towards the Council's Clerk when questioning the accuracy of minutes and advice given at meetings of the Council. Witnesses were divided on whether the member's manner could be described as argumentative and obstructive, or plain talking and professional, but the general consensus was that he communicated with everyone in this way and did not appear to be doing so only to the Clerk.

It is not my role to inhibit robust political debate. Following my analysis of the evidence, I was not persuaded that there was evidence to suggest that the content of the discussions at the meetings was inappropriate. There was no evidence of behaviour which was personal, rude or abusive towards the Clerk. I was also not persuaded that the tone and content of the emails which concerned Council business, although challenging and questioning at times, would amount to disrespectful or bullying behaviour. I, therefore, concluded that no action needed to be taken.

### Compromising the impartiality of officers of the authority See paragraph 4(d)

**You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council.** You should not approach anyone who works for, or on behalf of, the Council with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code, which may affect your ability to participate in some matters being considered by the Council (see section 3 of this guidance).

You can legitimately question officers in order to understand, for example, their reasons for proposing the Council acts in a particular way or to clarify the content of a report they have written. However, you must not try to force them to act differently, change their advice, or alter the content of a report, if doing so would prejudice their professional integrity and neutrality.

### Hypothetical Scenario

The Clerk is responsible for allocating allotments from a waiting list, the allotments are very popular and vacancies very rarely arise. The Clerk advised the Council that an allotment had become vacant and that they would consult the list and allocate the allotment to the person who had been waiting the longest in accordance with the Council's allotment allocation procedure. A Councillor's father had been waiting for an allotment for almost seven years.

The Councillor approached the Clerk after the meeting and asked to see the list. He noted that one person was ahead of his father by only one month. The Councillor asked the Clerk to give the vacant allotment to his father, he said that as so much time had elapsed since his father and the other person had applied, the other person was unlikely to question who was first and, in any event, it would not be difficult to retype the list. The Councillor suggested that in return for this favour he would encourage the Council to look favourably on the charity suggested by the

Clerk when it came time to decide where to allocate funds raised at a fun day the following month. I would regard this as indicative of a breach of paragraph 4(d) of the Code.

### Example 13

A member of a County Borough Council who had previously raised concerns with the Council's Chief Executive, telephoned his (the Chief Executive's) Personal Assistant and put her under pressure to persuade the Chief Executive to take a particular course of action. The member also pressed the Personal Assistant to access the Chief Executive's emails without his express instruction. The member told the Personal Assistant that if she did not do what he asked, the Local Education Authority might be "called in". The Adjudication Panel found that the member had gone beyond making a request to the Personal Assistant, due to the vehemence in which he had made his demands, combined with the veiled threat that if the Personal Assistant did not take the action that he required, the Local Education Authority would be "called in". The Panel found the member had attempted to compromise the impartiality of the Personal Assistant in breach of paragraph 4(d).

### Disclosing confidential information See paragraph 5(a)

**You must not disclose confidential information, or information which should be reasonably regarded to be of a confidential nature, except in any of the following circumstances:**

- **you have the consent of the person authorised to give it**
- **you are required by law to do so.**

The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a community councillor you may have sight of information of a confidential or sensitive nature, such as personal or commercially sensitive information. You must also be mindful that, as a councillor, you hold a position of trust and you may find that members of the public will provide you with information that should be regarded as confidential. You should always confirm (where possible obtain an agreement

in writing) that you have the person's permission to disclose such information before doing so. As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. Similarly, legal advice is almost always covered by legal privilege and should not be disclosed.

### Example 14

Community Councillor S received an email from another councillor regarding the employment of the caretaker, which was marked 'confidential'. Councillor S disclosed the email to the caretaker's wife and information in the email was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that this was indicative of a breach of paragraph 5(a) of the Code by Councillor S.

### Example 15

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

I expect information provided to a member during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

### Preventing access to information See paragraph 5(b)

**You must not prevent any person from accessing information which they are entitled to by law.** This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your Council which they have a right to access. To find out more

about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Clerk.

Any information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your Council may be required to release it in response to a request. If you do not provide the information to the Clerk or other person dealing with the information request when asked, you will be in breach of the Code.

Your Council needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to the person dealing with the information request to allow the Council to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

### Example 16

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

**Disrepute**  
See paragraph 6(1)(a)

**Any conduct  
unbecoming of a member  
can constitute disrepute**

**You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.

Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

### **Example 17**

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself, by misrepresenting the purchase as being on behalf of the Council, and his abusive behaviour towards the staff had brought the office of member into disrepute.

### **Example 18**

A member of a County Borough Council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10 year-old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published, she telephoned the Councillor who she said was abusive towards her during the call. In a subsequent email exchange, the Councillor told her that she had “[failed] to take ANY responsibility for allowing your 10yr old child out alone”, that her “ill-educated in the highway code son” was to blame and said “don’t you dare try and shift your inadequacies as a parent upon me”.

The Adjudication Panel found the member had failed to show respect and consideration to the complainant through the use of inappropriate language and by making unfounded and serious allegations based his limited knowledge of the facts, in breach of paragraph 4(b). Through its aggressive tone, threatening nature and serious allegations contained in the email, the member has also brought the office of member into disrepute, in breach of paragraph 6(1)(a).

### Example 19

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code.

### Reporting criminal behaviour See paragraph 6(1)(b)

**The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your Council (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your Council's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your Council's Clerk. The Principal Council's Monitoring Officer may also be able to provide advice.

### Reporting breaches of the Code See paragraph 6(1)(c)

**If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer of the principal Council.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.



In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should seek the advice of your Clerk or consult the Monitoring Officer as soon as possible.

The Clerk or Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or a technical one, or where there is no clear evidence that a breach occurred, your Clerk or Monitoring Officer may advise you of the likely threshold I will set in deciding whether an investigation is appropriate. In the most serious of cases the Clerk or Monitoring Officer may, as an exception, decide to refer matters to me directly or on your behalf. In most other cases, you will be advised to do so yourself.

If your Council has adopted the Model Local Resolution Protocol for low-level complaints, your Clerk or the Monitoring Officer may suggest that the matter would be more appropriately dealt with through that process. The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.

In determining whether to investigate a complaint of a breach, I will use the two-stage test which I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

## Vexatious complaints

See paragraph 6(1)(d)

**You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

You must not make complaints against other members, your Council's officers or people working on behalf of your Council which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the Council's local resolution process, if there is one in place.

Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and may also be a breach of the Code. You must report well-founded alleged breaches to the Monitoring Officer of the Principal Council - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

The Code should not be used by members to pursue their political or private differences. You should also avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about.

### **Example 20**

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

This aspect of the Code has been a particular problem within community and town councils. In the past, it has been necessary for my predecessor to correspond with the Clerk of a council in relation to their mutual concerns about the number of complaints received in respect of its members. As previously stated, I too have had concerns about the number of low-level, tit-for-tat complaints that are still being received from community councillors in particular. Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and their councils and, more generally, can harm public confidence in our elected members. At the extreme, they can also have such an adverse impact on relations within the Council as whole as to render it incapable of conducting its business effectively. Where it becomes apparent that repeated member against member complaints are being made to my office, I would urge those councils to reflect on the culture which has resulted in these complaints and consider how this behaviour might be changed to avoid such complaints.

Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

I appreciate that it can be frustrating if a member of the public makes repeated complaints against you which you consider to be vexatious or frivolous in nature. They are not subject to the Code and I am required to consider each complaint on its own merit. However, it is unlikely that such complaints would pass my two-stage test and be accepted for investigation.

### Co-operating with investigations See paragraph 6(2)

**You must co-operate with an investigation when it is being conducted by me or by the Monitoring Officer of the Principal Council for the area using our statutory powers.** Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone

calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and the Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

### **Example 21**

My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales.

During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and he made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### Using your position improperly See paragraph 7(a)

**You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**

Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community and town councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.

The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraphs 6(1)(a) and (b). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

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<sup>9</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

### Example 22

A Councillor was a 'joint co-ordinator' of a community group. The Councillor did not notify the Council of her position in this group. She took part in the consideration of, and voted on, the decision to negotiate a new lease in respect of a workshop used by the community group. A Standards Committee found that she had used her position on the Council improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the Council. She was found in breach of paragraph 7(a) of the Code.

### Example 23

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) and 6(1)(a) of the Code.

### Example 24

A member of a Town Council wrote to the Welsh Government indicating that an application for a loan in respect of a 'Community Hub' project, supported by the Council, should not go ahead as the matter was subject to further discussion. The correspondence was signed by the member using the title Deputy Mayor of the Council. As a consequence, the Welsh Government made further enquiries of the Council and required it to submit a further loan application, which resulted in further work and expense for the Council.

During the course of my investigation the member claimed the correspondence was sent in a personal capacity. It was an accepted fact that the Community Hub would include facilities which would be in direct competition with the business interests of the member. In my view, the Welsh Government was unlikely to have acted upon the member's communication had it not been under the impression that the author was representing the Council.

A Standards Committee considered that the communication was designed to have an impact on the project. Whereas some of the motivation may have been to protect the public interest, the Committee considered the member had gone about it in an inappropriate manner which gave the impression that he was acting in his own business interests. The Committee concluded that the member had attempted to use his position improperly to gain an advantage in breach of paragraph 7(a) of the Code.

### Using the Council's resources See sub-paragraphs 7(b)(i) – (iv)

**You must only use or authorise the use of the resources of the Council in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** If your Council provides you with access to resources (for example telephone, computer and other IT facilities), you must only use these resources for carrying out your Council business and any other activity which your Council has authorised you to use them for.

You must be familiar with the rules made by your Council applying to the use of these resources.

Failure to comply with your Council's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your Council's resources, you must take care to ensure that this is allowed by your Council's rules.

### Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

**You must make sure you use the Council's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the Council's resources, you must have regard, if applicable, to any guidance issued by your Council, for example, your Council's Information Security Policy.

### Example 25

A member of a County Council was found in breach of the Code for making improper use of his council-owned computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council equipment in breach of the Code and had brought the office of member into disrepute.

### Reaching decisions objectively See paragraph 8(a)

**When taking part in meetings of your Council, or when arriving at decisions relating to the Council's business, you must do so with an open mind and consider the issues objectively.** During the decision-making process, you must act fairly and take proper account of the public interest.

Most decisions taken by a community or town council relate to local matters and funding of local projects. Although the amounts of money being spent are smaller than at county level, all decisions must be taken on the basis of the facts in front of you. You must not have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

**Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.



### Considering advice provided to you and giving reasons

See paragraph 8(b)

**You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your Council.**

You must have regard to all of the advice you receive from your Clerk or other officers of the Council. The Clerk is usually also the 'Proper Officer'<sup>10</sup> and it is part of their role to research the policy, guidelines and legislation relevant to advice given when taking decisions.

It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the Clerk all of the information they need to take into account when giving you advice.

If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

As a matter of good practice, where you disagree with the Clerk's recommendations in making a decision, you should give clear reasons for your decision. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes.

### Expenses

See paragraph 9(a)

**You need to follow the law and your Council's requirements in claiming expenses and allowances.** If you are in any doubt about your entitlements, or the proper way to claim, you should ask your Clerk for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming for.

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<sup>10</sup> The 'proper officer' is an officer appointed by the Council to exercise particular functions (ref: Section 270(3), Local Government Act 1972).

### Gifts and hospitality

See paragraph 9(b)

**It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your Council. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

### 3 Personal and prejudicial interests

The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Clerk for advice. However, the decision on what course of action should be taken remains with you.

To provide some further assistance, I have attached a flowchart to this guidance, based on a document prepared by Rhondda Cynon Taf County Borough Council, which is designed to take you through the questions that you should ask when deciding whether you have an interest. It is for illustration purposes only and is not definitive.

Guidance on registering interests is at Section 4.

**Personal Interests**  
See paragraph 10

**Do you have a link or close connection to the item to be considered?**

**While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but as you will read below, there are other occasions, such as when speaking to the Clerk about the matter concerned, when you may also need to do so.

Listed below are some questions that you should ask yourself when deciding if you have an interest:

### **Do I have a personal interest?**

You have a personal interest in any business of your Council, including when making a decision, where it relates to or is likely to affect:

1. your job or your business
2. your employer, or any firm in which you are a partner or paid director
3. any person who has paid towards the cost of your election or your expenses as a member
4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your Council's area
5. any contract that your Council makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your Council's area (this is especially important in all planning matters including strategic plans)
7. any land let by your Council to a firm in which you're a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your Council
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes

- body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your Council's area
10. any land in your Council's area which you have a license to occupy for at least 28 days.

It is always safer to declare an interest; however, if in doubt, consult your Clerk or the Monitoring Officer of the Principal Council for area.

### Matters affecting your well-being or financial position

If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward, or the Council's area if it does not have multiple wards, you have a personal interest.

Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### What is “a body exercising functions of a public nature”?

The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

When conducting community or town council business, it is likely that you will be acting on a body which is exercising functions of a public nature. You may also be doing this if you have been appointed to act on behalf of the Council on a community project or interest group.

### What does “affecting well-being or financial position” mean?

The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

**Close personal associates include friends, relatives, business associates and those with whom you have been in dispute**

### Who is a close personal associate?

Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community.

Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Clerk or the Monitoring Officer of the Principal Council.

### “Twin hatted” members

If you are a member of both a community or town council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community or Town Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

If you do so, you would be well advised to state at the Community or Town Council meeting that you would be looking at the matter afresh when you consider it at the Planning Committee meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community or Town Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

Obviously, if the planning application was one submitted by the Community or Town Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 26

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk’s remuneration package. The member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member’s relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members’ ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### What if I am not aware of my personal interest?

Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

## What to do when you have a personal interest See paragraph 11

Once disclosed you can stay & participate if your interest is not prejudicial

When you have a personal interest in any business of your Council, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

If you are attending a **meeting**,<sup>11</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your Council's Clerk. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

If you are making **written representations** (including by email, text etc) to a member or officer of your Council regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.

**Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.

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<sup>11</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present, not just formal meetings of the council. For example, it can include an informal meeting of a member and officer.



If the Monitoring Officer of the principal council for the area has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.

If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 27

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

### Prejudicial Interests See paragraph 12

#### Do I have a prejudicial interest?

**Do not be swayed by what you think - consider what a member of the public would reasonably think**

Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public

interest. There are exemptions to this which are contained in paragraph 12(2) of the Code, although many of them are unlikely to apply to business undertaken by a community or town council.

### What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.

You would have a prejudicial interest in the consideration and decision on whether to support a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of your ward or Council area (if your Council does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

**Community councillors do not have a prejudicial interest in decisions made by their Council in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value does not exceed £500.** Furthermore, community councillors who have been appointed to the community group or voluntary organisation concerned by their Community Council, for example, to the board of a community hall, will not have a prejudicial interest in decisions made by their Council in respect of any grants, loans or other financial assistance in relation to that body. If, on the other hand, you are on such a board in another capacity and have not been appointed by your Council, then you will have a prejudicial interest.

### What to do when you have a prejudicial interest See paragraph 14

If you have a prejudicial interest in any aspect your Council's business you must not take part in the consideration of that business, or make representations about it, except in the circumstances described below.

Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.

**Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).

**This is unless you have obtained a dispensation from the relevant standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter,** by statutory right or otherwise. If that the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your Council for this purpose. However, where you attend a meeting you must immediately leave the

room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must also not write or make any oral representations about the matter, except in the circumstances above relating to representations by the public.

### Example 28

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### Do I have a statutory right to speak to the meeting?

The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your Council's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. The Code also provides the right to submit written representations to the public meeting in these circumstances. You may not, however, take part in the discussion or observe the vote.

### When must I leave the place where the meeting is held?

You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately after the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?

You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Clerk before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 29

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### Example 30

A Standards Committee found that a member of a Town Council with a personal and prejudicial interest sought to influence a decision about a project being considered by the Council, when he participated in a discussion at a Council meeting, in breach of paragraphs 14(1)(a) and (c) of the Code. It also found that the member's participation in the discussion constituted oral representations in breach of paragraph 14(1)(d); and he had made written representations to the Clerk and the Welsh Government in an attempt to derail the project, in breach of paragraph 14(1)(e).

### What if the public are not allowed to speak to the meeting on the matter?

If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.

This may be the case, for example, where your Council is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your Council. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

### Example 31

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her. The member had entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) and 14(1) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

## Dispensations

### If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?

Standards committees have powers under regulations<sup>12</sup> made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

You can apply in writing to the Principal Council's Standards Committee for a dispensation on one or more of the following grounds:

- at least 50 per cent of the Council or Committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- the nature of your interest is such that your participation would not harm public

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<sup>12</sup> Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001 No. 2279 (W.169)

- confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your Council's area
- the Committee considers it otherwise appropriate in all the circumstances. For example, where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation may enable the member to remain present in a meeting without participating in the business.

You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the Council. If failure to grant a dispensation will result in a council or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.



## 4 Registration of Personal Interests

See paragraph 15

### Key points

Community and town councils are required to maintain and publish electronically a record of its members' interests in a public register of interests. It must also be available for public inspection at reasonable hours. This record is maintained by the 'Proper Officer', usually your Clerk.

Unlike members of principal councils and other relevant authorities, as a community councillor you do not need to register pecuniary and other interests set out in paragraph 10(2)(a) of the Code upon taking up office. However, you may find that your Council has adopted this requirement as a matter of good practice.

You must, however, register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your Council's Clerk. As indicated in the guidance on paragraph 11 of the Code, your Clerk will have arrangements in place for this. **Even when you have registered a personal interest, you must still disclose the existence and nature of the interest each and every time before you participate in any business to which it relates.**

Where you become aware of a change to a registered personal interest, you must register that change by providing written notice to your Clerk within 28 days.

The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.

The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

## Sensitive information

See Paragraph 16

### Key points

You may be exempt from having to disclose and register certain information in your Council's register of interests if the Monitoring Officer of the Principal Council for the area agrees that it is 'sensitive information'.

'Sensitive information' is information the disclose of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).

You should provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Council's Clerk within 28 days asking them to include the information in the register.

## Gifts and hospitality

See Paragraph 17

### Key points

You must notify your Clerk of any gifts or hospitality worth more than the amount specified by your Council that you receive in connection with your official duties as a member, and the source of the gift or hospitality, within 28 days.

Like other interests in your register of interests, you may have a personal interest in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person, and then decide

whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your Council's gifts and hospitality policy.

### **Is the gift or hospitality connected to my official duties as a member?**

You should ask yourself, "would I have been given this if I was not on the Council?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Clerk.

You do not need to notify your Clerk of gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your Council). However, you should always notify your Clerk of any gift or hospitality if it could be perceived as something given to you because of your position or if your Council requires you to do so.

### **What if I do not know the value of a gift or hospitality?**

The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

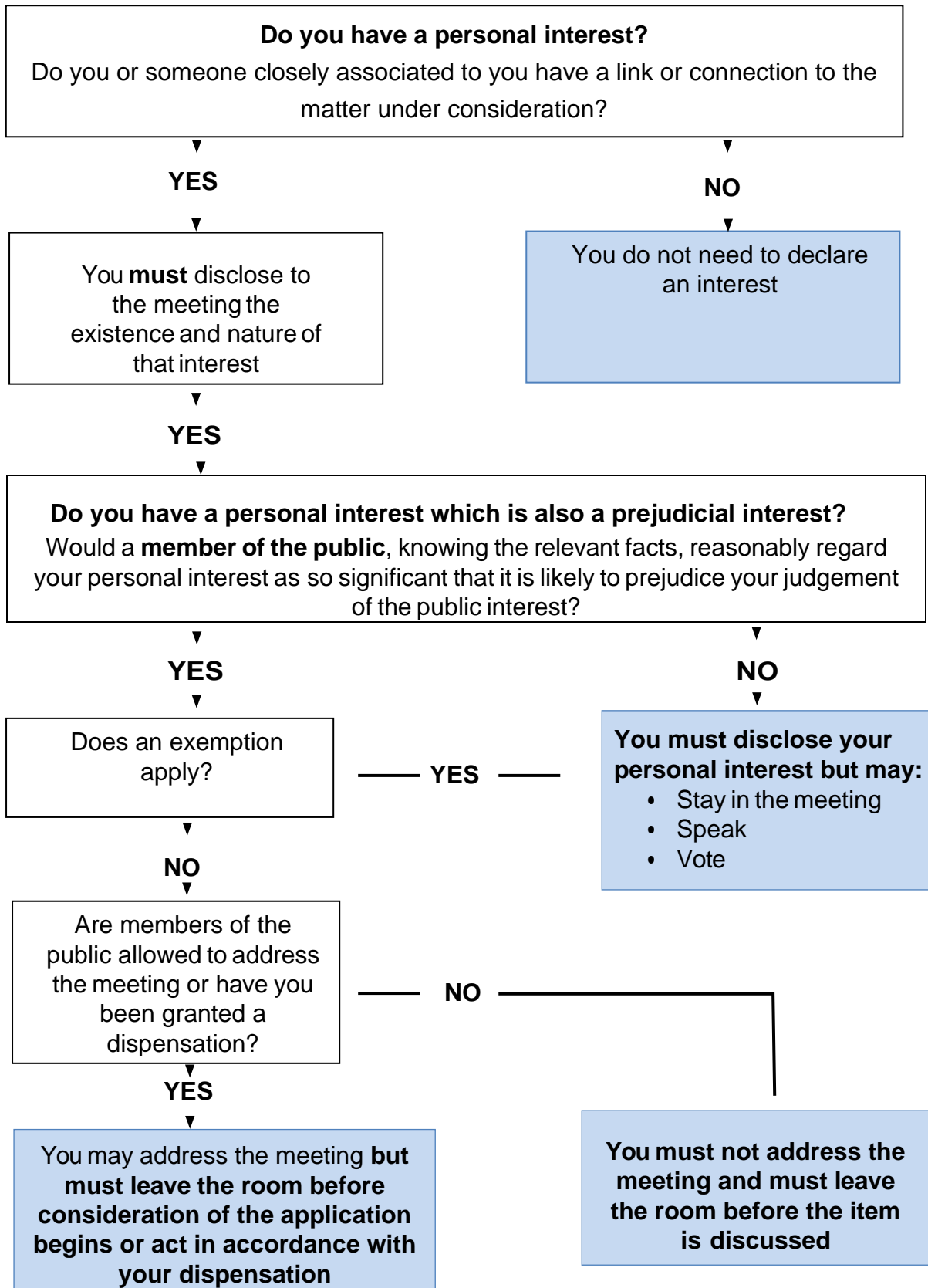
You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your Council or over should be registered.

The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Appendix

Declaration of personal and prejudicial interests

Questions to ask yourself. If in doubt you should ask your Clerk or your Monitoring Officer.



## Contact us

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Pencoed  
CF35 5LJ

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Further information about the service offered by the Public Services Ombudsman for Wales can also be found at <http://www.ombudsman.wales>

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## **RHONDDA CYNON TAF**

### **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

#### **STANDARDS COMMITTEE**

**19 MARCH 2021**

### **REVIEW OF THE PROCEDURES FOR DEALING WITH COMPLAINTS REFERRED TO THE STANDARDS COMMITTEE BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES**

#### **REPORT OF THE MONITORING OFFICER**

#### **1. PURPOSE OF REPORT**

To review the procedures for dealing with complaints referred to the Committee by the Public Services Ombudsman For Wales (the 'Ombudsman'), determine whether any amendments are required to be made to those procedures and ensure they remain fit for purpose.

#### **2. RECOMMENDATION**

The Committee is recommended to:

- 2.1 Authorise the Monitoring Officer to amend the procedures for dealing with complaints referred to the Committee as shown in **Appendix A**, subject to any further amendments agreed by the Committee.

#### **3. BACKGROUND**

- 3.1 All Members of Rhondda Cynon Taf County Borough Council are bound by the statutory Members' Code of Conduct adopted by the Council (pursuant to section 51 of the Local Government Act 2000 (the Act)). The Standards Committee is also the responsible body for hearing complaints referred to it by the Ombudsman or Monitoring Officer that relate to members of Town and Community Councils within the Rhondda Cynon Taf area.
- 3.2 The Ombudsman may investigate any alleged breach of the Code of Conduct by a Member (under section 69 of the Act).
- 3.3 Under the Standards Committee's terms of reference (paragraph (g)), the Committee has responsibility for:

- (g) *Dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that Officer by the Public Services Ombudsman For Wales.*
- 3.4 The Committee has adopted separate procedures for it to determine:  
(i) complaints referred by the Ombudsman - this procedure was last amended in April 2011; and  
(ii) complaints under the Local Resolution Protocol.
- 3.5 The Ombudsman may refer a misconduct complaint to the Monitoring Officer under section 70(4) or section 71(2) of the Act. A referral under section 70(4) requires the Monitoring Officer to conduct an investigation into the complaint and then submit an investigation report to the Standards Committee for determination of the complaint. A referral under section 71(2) is made when the Ombudsman has investigated the complaint and requires the Monitoring Officer to consider the investigation report and submit it, with recommendations, to the Standards Committee for determination.
- 3.6 The powers and duties of the Monitoring Officer and the Standards Committee and the procedure to be followed in dealing with a referral from the Ombudsman are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
- 3.7 Upon receiving a referral from the Ombudsman under section 71(2) of the Act, the Monitoring Officer is obliged to consider the Ombudsman's investigation report and, if appropriate, make recommendations to the Standards Committee.
- 3.8 Under the Regulations, the Committee is required to:  
(i) Make an initial determination that either there is no evidence of a breach of the Code, or that the Councillor/Co-opted Member should be given the opportunity to respond, either orally or in writing; and  
(ii) If the Committee's initial determination is to give the Councillor/Co-opted Member the opportunity to respond, the Committee must then consider the Councillor's/Co-opted Member's representations and make a final determination.
- 3.9 The Committee's final determination, if required, must be one of the following:  
(a) that there is no evidence of any breach of the Code of Conduct and therefore no further action needs to be taken;  
(b) that the Member has breached the Code of Conduct but that no action needs to be taken in respect of that breach;  
(c) that the Member has breached the Code of Conduct and should be censured, or  
(d) that the Member has breached the Code of Conduct and should be suspended or partially suspended from being a Member of the authority for a period of up to six months.



- 3.10 After making its final determination, the Committee is required to give notice of its determination to the persons concerned and the Ombudsman and to produce and publish a report on the outcome of the investigation.
- 3.11 If the Committee finds a breach of the Code, the Councillor/Co-opted Member may apply to the Adjudication Panel for Wales within 21 days from receiving notice of the Committee's determination for permission to appeal. If permission to appeal is granted, the Adjudication Panel for Wales may either uphold the Committee's determination, recommend a different sanction to the Committee for reconsideration or overturn the Committee's determination.

#### **4. MONITORING OFFICER'S RECOMMENDATIONS**

- 4.1 The Regulations 2001 make certain provision regarding the procedure to be followed for the investigation and determination of Member misconduct complaints. Subject to any express provisions in these Regulations (or the Standards Committees (Wales) Regulations 2001), the procedure to be followed by a Standards Committee in exercising its functions under the Regulations is for the Committee to decide (Regulation 8).
- 4.2 As noted in paragraph 8 above, the Committee adopted a procedure for dealing with complaints referred by the Ombudsman in April 2011.
- 4.3 The procedure seeks to comply with:
- a. The Regulations; and
  - b. The principles of natural justice. In particular, it seeks to ensure that the hearing is fair and gives adequate opportunity for each party to present their case.
- 4.4 The procedure has been reviewed and a number of changes are recommended to reflect current legislative requirements, clarify procedures and ensure they remain fit for purpose. The proposed amendments to the current procedure are shown in **Appendix A** (marked up copy showing proposed amendments) and **Appendix B** (clean, formatted copy).

#### **5. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report.

#### **6. LEGAL IMPLICATIONS**

- 6.1 Members may wish to note that where a meeting of a Standards Committee or sub-committee is convened to consider a misconduct complaint referred by the Ombudsman, the statutory access to information rules (which apply to meetings of the Council and its committees and sub-committees under Part VA of the Local Government and Housing Act 1989) provide the following specific exemptions:

(i) There is no requirement to publish or make publicly available the agendas, reports, minutes or background papers connected to this matter until after the conclusion of the proceedings (after the appeal period ends or any appeal is concluded) – Regulation 26(2A) of the Standards Committee (Wales) Regulations 2001; and

(ii) The deliberations of the committee or sub-committee in reaching its findings; and any confidential information are exempt, if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information – Regulation 4 of the Standards Committees (Wales) Amendment Regulations 2007 and paragraphs 18A and 18C of Schedule 12A of the Local Government Act 1972.

6.2 The public may also be excluded from any meeting where exempt information is to be discussed. The categories of exempt information for these purposes includes information about an individual, provided the committee or subcommittee is satisfied that the public interest in exempting the information outweighs the public interest in disclosing it. This means that the Committee will be required to decide whether the hearing (or any part of it) should be conducted in public or private. The Councillor/Co-opted Member complained of will be given the opportunity to make representations on this point. However, as noted above, the Committee is required produce a report on the outcome of the investigation, which is to be published by the Monitoring Officer after the conclusion of the matter (Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001).

6.3 Other relevant legal implications are set out in the body of the report.

**LOCAL GOVERNMENT ACT 1972**  
**AS AMENDED BY**  
**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**  
**STANDARDS COMMITTEE**  
**19 MARCH 2021**  
**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

PROCEDURES FOR DEALING WITH COMPLAINTS REFERRED TO THE  
STANDARDS COMMITTEE BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES –  
APPROVED APRIL 2011

**Contact:** Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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**PROCEDURE FOR DEALING WITH ALLEGATIONS MADE AGAINST COUNCILLORS AND CO-OPTED MEMBERS WHICH ARE AND REFERRED TO THE STANDARDS COMMITTEE**

**Interpretation**

1. In this document the words or phrases set out below have the meanings ascribed to them.

Word or phrase	Meaning
Democratic Services Officer	The officer for the time being providing clerical and administrative assistance to the Standards Committee
Investigating Officer	(a) in the case of an investigation undertaken by or on behalf of the Public Services Ombudsman and referred to the Monitoring Officer under section 71(2) of the Local Government Act 2000, the person who conducted the investigation; or (b) in the case of an investigation referred to him or her under section 70(4) of the Local Government Act 2000, the Monitoring Officer <u>or a person appointed by the Monitoring Officer to undertake the investigation</u>
Legal Advisor	The officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, the Deputy Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the <u>a</u> Authority
Monitoring Officer	The officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989

**Background**

2. Under section 69 of the Local Government Act 2000 (the 'LGA 2000') the Public Services Ombudsman For Wales (the 'Public Services Ombudsman') may

investigate any alleged breach by members or co-opted members (or former members or co-opted members) of the code of conduct of the Council or one of the Community or Town Councils in the area of the Council.

3. Where the Public Services Ombudsman ceases such an investigation into allegations that a councillor has breached the code of conduct before it is completed (under section 70(4) of the LGA 2000-Act) he or she may refer the matter subject to the investigation to the Council's Monitoring Officer.
4. Alternatively, where the Public Services Ombudsman decides after investigating (under section 71(2) of the LGA 2000-Act) that it is appropriate, he or she may produce a report on the outcome of the investigation and send it to the Monitoring Officer and the Council's Standards Committee.
5. The Local Government Investigation (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 provide that the Monitoring Officer:
  - (a) will investigate matters referred under section 70(4) before reporting and, if appropriate, making recommendations, to the relevant authority's Standards Committee; or
  - (b) where a matter has been referred under section 71(2), he or she will consider the report of the Public Services Ombudsman, before, if appropriate, making recommendations to the relevant authority's Standards Committee.
6. In carrying out an investigation, conducted under section 70(4) of the LGA 2000 the Monitoring-Investigating Officer may follow such procedures as he or she considers appropriate in the circumstances of the case and in particular may:
  - (a) make such enquiries of any person as he or she thinks necessary for the purposes of carrying out the investigation,
  - (b) require any person to provide him or her with such information, explanation or documents as he or she considers necessary,
  - (c) require any member or co-opted member or officer of the Council to appear before him or her for the purposes of paragraph (a) and (b) above.
7. In conducting the investigation, the Monitoring-Investigating Officer may be assisted by any person and may obtain expert or other advice. In certain ~~cases~~cases, expenses may be paid to persons attending or assisting the Monitoring-Investigating Officer or providing advice to him or her.
8. After concluding an investigation, the Monitoring-Investigating Officer must:

- (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee.
  - (b) Send a copy of the report to any person who is the subject of the investigation, and
  - (c) Take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.
9. The Standards Committee must consider a report from the **Monitoring Investigating** Officer on his or her investigation or a report from the Public Services Ombudsman together with any recommendations of the Monitoring Officer. It must then make an initial determination either:
- (a) that there is no evidence of a failure to comply with the code of conduct, or
  - (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
10. Where the Standards Committee decides that an opportunity to respond needs to be given and after considering any response made by any such person, the Committee must come to one of three conclusions:
- (a) there is no evidence of a failure to comply with the code of conduct and no further action should be taken;
  - (b) There is evidence of a failure to comply with the code of conduct, but no further action should be taken; or
  - (c) There is evidence of a failure to comply with the code of conduct and a member or co-opted member (or former member or co-opted member) should be censured or suspended.
11. The Standards Committee must take any appropriate action arising from the conclusions it has drawn.
12. The decision of the Standards Committee is subject to a right of appeal to an appeals tribunal drawn from the Adjudication Panel for Wales.
13. An appeals tribunal may endorse the decision of the Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the decision.

#### **Initial Determination of Standards Committee**

14. After the **Monitoring Investigating** Officer has:
- (a) Produced a report on the findings of his or her investigation, or
  - (b) Considered the report of the Public Services Ombudsman: and

- (c) Sent a copy to the person who is the subject of the investigation, and taken reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.

He or she will ask the Democratic Services Officer to call a meeting of the Standards Committee as soon as possible and will send a copy of the report together with his or her recommendations (if any) to each of the Members of the Committee.

15. Where the report is that of the Public Services Ombudsman the Monitoring Officer will advise the Standards Committee. Where the report is that of the Monitoring Officer, the Deputy Monitoring Officer or some other suitably qualified person will advise the Standards Committee.

16. The Democratic Services Officer will give notice of the time and place of the meeting.

17. The business of the meeting will be limited to considering the report and to making a determination either:

- a) that there is no evidence of any failure to comply with the relevant authority's code of conduct or;
- b) that any person who is the subject of the investigation should be given the opportunity to make representations either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed or may have failed to comply with the relevant authority's code of conduct.

18. Where the Standards Committee decides that there is no evidence of any failure to comply with the relevant authority's code of conduct the Committee will ask the Democratic Services Officer to notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman accordingly.

19. Where the Standards Committee decides that any person who is the subject of the investigation should be given the opportunity to make representations in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant authority's code of conduct, the Committee will ask the Democratic Services Officer to notify the person who is the subject of the investigation of the Committee's decision and of the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

### **Procedure prior to consideration of representations**

20. The Democratic Services Officer, in consultation with the Chair of the Standards Committee, will write to the person who is the subject of the investigation to propose a date for the hearing, outline the meeting-hearing procedure and the person's rights.



21. The person who is the subject of the investigation will be required to notify the Democratic Services Officer in writing within not more than 14 days from the date of the communication sent by the said Officer, whether or not he or she

- (a) wants to make representations and if so, whether orally or in writing;
- (b) disagrees with any of the findings of fact in the report, including what matters he or she disagrees with and the reasons for any disagreements;
- (c) wants to be represented at the meeting hearing by a solicitor, barrister or any other person;
- (d) wants to give evidence to the Standards Committee, either orally or in writing;
- (e) wants to call relevant witnesses to give evidence to the Standards Committee;
- (f) wants any part of the meeting hearing to be held in private;
- (g) wants any part of the report or other relevant documents to be withheld from the public; and
- (h) can come to the meeting hearing.

22. For the avoidance of doubt should a person who is subject of an investigation not respond in writing within the 14 day period referred to in paragraph 21 above the Standards Committee can proceed to make arrangements for the matter to proceed to a hearing.

23. The Investigating Officer will notify the Democratic Services Officer in writing within 7 days of any comments on the response and whether or not he or she

- a. wants to be represented at the hearing;
- b. wants to call relevant witnesses to give evidence to the Standards Committee;
- c. wants any part of the meeting hearing to be held in private; and
- d. wants any part of the report or other relevant documents to be withheld from the public.

24. The Democratic Services Officer in consultation with the Legal Advisor to the Standards Committee, will write to the members of the Committee and to everyone involved at least two weeks before the meeting hearing to:

- (a) set the date, time and place for the hearing;
- (b) summarise the allegation;
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the persons who is the subject of the investigation or the Investigating Officer will go to or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the Investigating Officer's report, any relevant document(s), the response from the person who is the subject of the investigation and any further response from the Investigating Officer; and
- (h) outline the proposed procedure for the meetinghearing.

### **Consideration of Representation and Further Determination by the Standards Committee**

- 25. The Standards Committee may, in accordance with the requirements of natural justice, conduct the meetinghearing in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings.
- 26. The person who is the subject of the investigation or the Investigating Officer may be represented or accompanied whether or not legally qualified; but if in any particular case the Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.
- 27. The Standards Committee may take legal advice from its legal advisor at any time during the meetinghearing or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the person who is the subject of the investigation and the Investigating Officer if they are present but not the detail of the request for legal advice.

### **Failure of Parties to Attend**

- 28. If a party failed to be present or represented at a meetinghearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence –
  - (a) hear and decide the appeal/application or question in the party's absence; or

- (b) adjourn the hearing.
- (c) Before deciding to dispose of any matter or question in the absence of a party, the Standards Committee will consider any representation in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.
- (d) Where a party has failed to be present or presented at a ~~meeting~~ hearing of which he or she was duly notified, and the Standards Committee has disposed of the matter, no fresh appeal/application may be made to the Standards Committee.

### **Illness or incapacity**

29. If the Standards Committee is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the ~~meeting~~ hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter, including;

- (a) for the party to be visited at some convenient place by other persons appointed for the purposes by the Standards Committee, for the purpose of recording the party's evidence and any statement he or she may wish to make;
- (b) for taking the evidence of other witnesses on behalf of the party;
- (c) for enabling the party's representative and the other party or parties to comment, whether at a ~~meeting~~ hearing of the Standards Committee or in writing, on the evidence so taken and to make a statement in writing or to address the Standards Committee;
- (d) for the consideration of the matter to take place at the party's home or elsewhere convenient to the party; or
- (e) for the matter to be decided in the absence of the party.;

but any arrangement made must make provision for the other party or parties and their representatives, if they so wish, to be present while the evidence of the party or his or her witnesses is taken and to ask questions of the party or the witnesses.

### **Recording**

30. An audio recording of the hearing proceedings shall be made by the Council, but no recording shall be made at any time during the Standards Committee's deliberations or when the Committee is seeking advice from its Legal Advisor.

31. Access to the recording made under paragraph 30 may be granted, upon request, at any time after the hearing has ended, provided that no exempt or confidential information shall be publicly disclosed.

32. Save for the recording made under paragraph 30 no other digital recording, audio or visual or use of social media, shall be permitted during the hearing.

### **The Procedure for ~~the Meeting a Hearing~~ of the Standards Committee**

33. At the beginning of any ~~meeting~~ hearing the Chair of the Standards Committee will:

(i) introduce each of the members of the Committee and everyone involved in the hearing;

(ii) explain the manner and order of proceedings; and

(iii) obtain confirmation from everybody taking part in the hearing that they have understood the procedure.

34. The Chair, having taken legal advice from the Legal Advisor, may agree to vary these procedures in any instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

35. The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:

(i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the person who is the subject of the investigation and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and

(ii) the ability to request that the proceedings be conducted by exchange of written submissions only if the person who is the subject of the investigation so agrees.

### **Preliminary Procedural Issues**

36. The Committee should then resolve any issues or disagreements about how the hearing should continue, including whether all or part of the hearing should be heard without the attendance of the public.

37. If either party want to adduce further information to the Committee they should make an application to the Committee for permission to do so prior to the commencement of the formal part of the hearing. It will assist if the Legal Advisor and the other party have been provided with details

of any late information which must be relevant to the alleged breach/es and must be provided to the Monitoring Officer as early as possible, but in any event at least two working days before the commencement of the hearing. Late evidence will not be accepted at the hearing, unless the Committee is satisfied that there are exceptional circumstances. The Committee retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Committee.

### **Stage 1 – Formal Findings of Fact**

38. The Standards Committee can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law.
39. The Standards Committee will first consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report. If there is no disagreement the Committee can move onto the next stage of the hearing.
40. If there is a disagreement as to the facts, the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant finding of fact in the report. With the Standards Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee shall give the person who is the subject of the investigation an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
41. The person who is the subject of the investigation will then be invited to make representations to support his or her version of the facts and, with the Standards Committee's permission, to call any necessary witnesses to give evidence. The Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the person who is the subject of the investigation.
42. At any time, the Standards Committee may question any of the people involved or any of the witnesses.
43. If the person who is the subject of the investigation disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the ~~meeting~~hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the explanation of the person who is the subject of the investigation for not raising the issue at an earlier stage, the Committee may then;

- a. continue with the hearing, relying on the information in the Investigating Officer's report;
  - b. allow the person who is the subject of the investigation to make representations about the issue, and invite the ~~Investigating~~ Investigating Officer to respond and call any witnesses, as necessary; or
  - c. postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
44. At the conclusion of the representations as to matters of fact the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a conclusion ~~on~~ the matter.
45. The Committee shall then retire to consider their decision. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.
46. Once the decision is reached and the hearing re-convened, the Chair will announce the Committee's findings of fact.

### Stage 2- Did the Member fail to follow the Code?

47. The Committee then needs to consider, based on the facts it has found, whether or not the person who is the subject of the investigation has failed to follow the relevant authority's Code of Conduct. It should be noted that this stage of the hearing does not provide either the person who is the subject of the investigation or the Investigating Officer an opportunity to re-examine the facts of the case in question.
48. The Standards Committee will invite the person who is the subject of the investigation to respond to the representations of the Investigating Officer and to make representations whether or not, based on the facts the Committee has found, he or she has failed to follow the Code of Conduct.
- ~~48-49.~~ The Standards Committee will invite the Investigating Officer to make representation on whether or not, based on the facts the Committee has found, ~~the~~ person who is the subject of the investigation has failed to follow the Code of Conduct.
- ~~49. The Standards Committee will invite the person who is the subject of the investigation to respond to the representations of the Investigating Officer and to make representations whether or not, based on the facts the Committee has found, he or she has failed to follow the Code of Conduct.~~
50. The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.

51. The person who is the subject of the investigation will be invited to make any final relevant points.
52. The Standards Committee shall then retire to consider in private whether the Councillor did fail to comply with the Code of Conduct. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.
53. The Standards Committee shall take its decision on the balance of probability and based in the evidence which is received at the hearing.
54. The Standards Committee will reconvene in public and the Chairman will state the Standards Committee's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct.

### **Stage 3 – Breach of the Code and Sanctions**

55. If the Standards Committee decides that there has been no breach of the Code of Conduct it will formerly record that there is no evidence of a failure by the person who is the subject of the investigation to comply with the Code of Conduct and no further action should be taken. Nevertheless, the Committee may make general recommendations to the relevant authority in question.
56. If the Standard Committee decides that there is evidence of a failure to comply with the Code of Conduct it will invite the person who is the subject of the investigation and the Investigating Officer to make representations as to:
- (a) whether or not the committee should set a 'penaltysanction'; and
  - (b) what form any 'penalty' sanction should take.

57. The Committee may question the Investigating Officer and the person subject to the investigation and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.

58. The Standards Committee will consider the representations and shall then retire to consider in private ~~vide~~ whether no further action should be taken in respect of that failure to comply with the relevant authority's code of conduct, or whether the person who is the subject of the investigation should be censured, partially suspended or suspended for a period not exceeding six months. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.

59. The Standards Committee will then reconvene in public and the Chair of the Standards Committee will announce their decision.

60. The Committee may request the person subject to the investigation to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.

61. After considering any verbal or written representations from the Investigating Officer and the person subject to the investigation (should they choose to do so), the Committee will consider whether or not it should make any recommendations to the relevant authority concerned, with a view to promoting high standards of conduct among councillors and co-opted members.

### The Written decision

62. The Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Panel will announce its decision on the day the decision is made and provide a short-written confirmation of its decision on that same day. It will issue a full written decision, with reasons, within ten working days from the end of the hearing, although this time may be extended by the Chair, in consultation with the Monitoring Officer, if necessary.

63. The Standards Committee will instruct the Democratic Services Officer to send a copy of the full written decision record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation and to the Public Services Ombudsman for Wales (the 'Decision Notification').

### 57-64. Suspension

A period of suspension or partial suspension will commence on the day after whichever is the later of:

- a) The expiry of the time allowed to lodge a Notice of Appeal to an Appeals Tribunal of the Adjudication Panel For Wales (which is within 21 days of receiving the Standards Committee's determination Decision Notification). The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended); or
- b) Receipt of the notification of the conclusion of any appeal; or
- c) A further determination by the Standards Committee made after receiving a recommendation from an appeals panel.



## Referral by an Appeals Tribunal

~~58-65.~~ If:

- (a) the Standards Committee determines that the person who is the subject of the investigation failed to comply with the Code of Conduct;
- (b) that person appeals to an appeals tribunal drawn from the Adjudication Panel for Wales; and
- (c) the said tribunal refers the matter back to the Standards Committee with a recommendation that a different penalty be imposed the Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the appeals tribunal and will determine whether it should uphold its original determination or accept the recommendation.

~~59-66.~~ After making its determination the Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Standards Committee will instruct the Democratic Services Officer to send a copy of the written record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation, to the Public Services Ombudsman and to the ~~p~~President of the Adjudication Panel for Wales.

## **Publication**

~~60-67.~~ The Standards Committee will cause to be produced within 14 days after:

- (a) The expiry of the time allowed to lodge a notice of appeal under ~~r~~Regulations 10(2) of the Local Government Investigations (~~f~~Functions of mMonitoring appliesOfficers and Standards Committees) (Wales) Regulations 2001;
- (b) receipt of notification of the conclusion of any appeal in accordance with Regulation 12(a)(i) or (b) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001; or
- (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under Regulation 12(a)(ii) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Public Services Ombudsman for Wales, the Monitoring Officer and Proper Officer of the relevant authority concerned, the person subject

to the investigation and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.

~~61-68.~~ Upon receipt of the report of the Standards Committee, the Monitoring Officer shall:

- (a) For a period of 21 days publish the report on the Council's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
- (b) supply a copy of the report to any person on request if he or she pays such charge as the Council may reasonably require, and
- (c) not later than 7 days after the report is received from the Standards Committee, give public notice, by advertisement in a newspapers circulating in the area of the Council and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

#### **Costs**

~~62-69.~~ The Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

~~January 2011~~ Adopted by the Standards Committee on 19<sup>th</sup> March 2021

**PROCEDURE FOR DEALING WITH ALLEGATIONS MADE AGAINST COUNCILLORS AND CO-OPTED MEMBERS WHICH ARE REFERRED TO THE STANDARDS COMMITTEE**

**Interpretation**

1. In this document the words or phrases set out below have the meanings ascribed to them.

Word or phrase	Meaning
Democratic Services Officer	The officer for the time being providing clerical and administrative assistance to the Standards Committee
Investigating Officer	(a) in the case of an investigation undertaken by or on behalf of the Public Services Ombudsman and referred to the Monitoring Officer under section 71(2) of the Local Government Act 2000, the person who conducted the investigation; or (b) in the case of an investigation referred to him or her under section 70(4) of the Local Government Act 2000, the Monitoring Officer or a person appointed by the Monitoring Officer to undertake the investigation
Legal Advisor	The officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, the Deputy Monitoring Officer, another legally qualified officer of the Council, or someone appointed for this purpose from outside the Authority
Monitoring Officer	The officer for the time being appointed by the Council under section 5 of the Local Government and Housing Act 1989

**Background**

2. Under section 69 of the Local Government Act 2000 (the 'LGA 2000') the Public Services Ombudsman For Wales (the 'Public Services Ombudsman') may

investigate any alleged breach by members or co-opted members (or former members or co-opted members) of the code of conduct of the Council or one of the Community or Town Councils in the area of the Council.

3. Where the Public Services Ombudsman ceases such an investigation into allegations that a councillor has breached the code of conduct before it is completed (under section 70(4) of the LGA 2000) he or she may refer the matter subject to the investigation to the Council's Monitoring Officer.
4. Alternatively, where the Public Services Ombudsman decides after investigating (under section 71(2) of the LGA 2000) that it is appropriate, he or she may produce a report on the outcome of the investigation and send it to the Monitoring Officer and the Council's Standards Committee.
5. The Local Government Investigation (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 provide that the Monitoring Officer:
  - (a) will investigate matters referred under section 70(4) before reporting and, if appropriate, making recommendations, to the relevant authority's Standards Committee; or
  - (b) where a matter has been referred under section 71(2), he or she will consider the report of the Public Services Ombudsman, before, if appropriate, making recommendations to the relevant authority's Standards Committee.
6. In carrying out an investigation, conducted under section 70(4) of the LGA 2000 the Investigating Officer may follow such procedures as he or she considers appropriate in the circumstances of the case and in particular may:
  - (a) make such enquiries of any person as he or she thinks necessary for the purposes of carrying out the investigation,
  - (b) require any person to provide him or her with such information, explanation or documents as he or she considers necessary,
  - (c) require any member or co-opted member or officer of the Council to appear before him or her for the purposes of paragraph (a) and (b) above.
7. In conducting the investigation, the Investigating Officer may be assisted by any person and may obtain expert or other advice. In certain cases, expenses may be paid to persons attending or assisting the Investigating Officer or providing advice to him or her.
8. After concluding an investigation, the Investigating Officer must:

- (a) produce a report on the findings of his or her investigation and, if appropriate, may make recommendations to the Standards Committee.
  - (b) Send a copy of the report to any person who is the subject of the investigation, and
  - (c) Take reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation.
9. The Standards Committee must consider a report from the Investigating Officer on his or her investigation or a report from the Public Services Ombudsman together with any recommendations of the Monitoring Officer. It must then make an initial determination either:
- (a) that there is no evidence of a failure to comply with the code of conduct, or
  - (b) that any person who is the subject of the investigation must be given an opportunity to respond, either orally or in writing.
10. Where the Standards Committee decides that an opportunity to respond needs to be given and after considering any response made by any such person, the Committee must come to one of three conclusions:
- (a) there is no evidence of a failure to comply with the code of conduct and no further action should be taken;
  - (b) There is evidence of a failure to comply with the code of conduct, but no further action should be taken; or
  - (c) There is evidence of a failure to comply with the code of conduct and a member or co-opted member (or former member or co-opted member) should be censured or suspended.
11. The Standards Committee must take any appropriate action arising from the conclusions it has drawn.
12. The decision of the Standards Committee is subject to a right of appeal to an appeals tribunal drawn from the Adjudication Panel for Wales.
13. An appeals tribunal may endorse the decision of the Standards Committee, refer a matter back to it recommending it impose a different penalty, or overturn the decision.

#### **Initial Determination of Standards Committee**

14. After the Investigating Officer has:
- (a) Produced a report on the findings of his or her investigation, or
  - (b) Considered the report of the Public Services Ombudsman: and

- (c) Sent a copy to the person who is the subject of the investigation, and taken reasonable steps to send a copy of the report to any person who made any allegation which gave rise to the investigation,

he or she will ask the Democratic Services Officer to call a meeting of the Standards Committee as soon as possible and will send a copy of the report together with his or her recommendations (if any) to each of the Members of the Committee.

15. Where the report is that of the Public Services Ombudsman the Monitoring Officer will advise the Standards Committee. Where the report is that of the Monitoring Officer, the Deputy Monitoring Officer or some other suitably qualified person will advise the Standards Committee.
16. The Democratic Services Officer will give notice of the time and place of the meeting.
17. The business of the meeting will be limited to considering the report and to making a determination either:
  - a) that there is no evidence of any failure to comply with the relevant authority's code of conduct or;
  - b) that any person who is the subject of the investigation should be given the opportunity to make representations either orally or in writing in respect of the findings of the investigation and any allegation that he or she has failed or may have failed to comply with the relevant authority's code of conduct.
18. Where the Standards Committee decides that there is no evidence of any failure to comply with the relevant authority's code of conduct the Committee will ask the Democratic Services Officer to notify any person who is the subject of the investigation, any person who made any allegation which gave rise to the investigation and the Public Services Ombudsman accordingly.
19. Where the Standards Committee decides that any person who is the subject of the investigation should be given the opportunity to make representations in respect of the findings of the investigation and any allegation that he or she has failed, or may have failed, to comply with the relevant authority's code of conduct, the Committee will ask the Democratic Services Officer to notify the person who is the subject of the investigation of the Committee's decision and of the procedure which the Committee proposes to adopt to receive and consider any representations that he or she may wish to make.

#### **Procedure prior to consideration of representations**

20. The Democratic Services Officer, in consultation with the Chair of the Standards Committee, will write to the person who is the subject of the investigation to propose a date for the hearing, outline the hearing procedure and the person's rights.

21. The person who is the subject of the investigation will be required to notify the Democratic Services Officer in writing within not more than 14 days from the date of the communication sent by the said Officer, whether or not he or she
- (a) wants to make representations and if so, whether orally or in writing;
  - (b) disagrees with any of the findings of fact in the report, including what matters he or she disagrees with and the reasons for any disagreements;
  - (c) wants to be represented at the hearing by a solicitor, barrister or any other person;
  - (d) wants to give evidence to the Standards Committee, either orally or in writing;
  - (e) wants to call relevant witnesses to give evidence to the Standards Committee;
  - (f) wants any part of the hearing to be held in private;
  - (g) wants any part of the report or other relevant documents to be withheld from the public; and
  - (h) can come to the hearing.
22. For the avoidance of doubt should a person who is subject of an investigation not respond in writing within the 14 day period referred to in paragraph 21 above the Standards Committee can proceed to make arrangements for the matter to proceed to a hearing.
23. The Investigating Officer will notify the Democratic Services Officer in writing within 7 days of any comments on the response and whether or not he or she
- a. wants to be represented at the hearing;
  - b. wants to call relevant witnesses to give evidence to the Standards Committee;
  - c. wants any part of the hearing to be held in private; and
  - d. wants any part of the report or other relevant documents to be withheld from the public.
24. The Democratic Services Officer in consultation with the Legal Advisor to the Standards Committee, will write to the members of the Committee and to everyone involved at least two weeks before the hearing to:

- (a) set the date, time and place for the hearing;
- (b) summarise the allegation;
- (c) outline the main facts of the case that are agreed;
- (d) outline the main facts which are not agreed;
- (e) note whether the persons who is the subject of the investigation or the Investigating Officer will go to or be represented at the hearing;
- (f) list those witnesses, if any, who will be asked to give evidence;
- (g) enclose the Investigating Officer's report, any relevant document(s), the response from the person who is the subject of the investigation and any further response from the Investigating Officer; and
- (h) outline the proposed procedure for the hearing.

### **Consideration of Representation and Further Determination by the Standards Committee**

25. The Standards Committee may, in accordance with the requirements of natural justice, conduct the hearing in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings.
26. The person who is the subject of the investigation or the Investigating Officer may be represented or accompanied whether or not legally qualified; but if in any particular case the Standards Committee is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a party at the hearing.
27. The Standards Committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee will be shared with the person who is the subject of the investigation and the Investigating Officer if they are present but not the detail of the request for legal advice.

### **Failure of Parties to Attend**

28. If a party failed to be present or represented at a hearing, the Standards Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence –
- (a) hear and decide the appeal/application or question in the party's absence; or
  - (b) adjourn the hearing.



- (c) Before deciding to dispose of any matter or question in the absence of a party, the Standards Committee will consider any representation in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.
- (d) Where a party has failed to be present or presented at a hearing of which he or she was duly notified, and the Standards Committee has disposed of the matter, no fresh appeal/application may be made to the Standards Committee.

### **Illness or incapacity**

29. If the Standards Committee is satisfied that any party is unable, through physical or mental sickness or impairment, to attend the hearing and that the party's inability is likely to continue for a long time, the Standards Committee may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the matter, including;

- (a) for the party to be visited at some convenient place by other persons appointed for the purposes by the Standards Committee, for the purpose of recording the party's evidence and any statement he or she may wish to make;
- (b) for taking the evidence of other witnesses on behalf of the party;
- (c) for enabling the party's representative and the other party or parties to comment, whether at a hearing of the Standards Committee or in writing, on the evidence so taken and to make a statement in writing or to address the Standards Committee;
- (d) for the consideration of the matter to take place at the party's home or elsewhere convenient to the party; or
- (e) for the matter to be decided in the absence of the party,

but any arrangement made must make provision for the other party or parties and their representatives, if they so wish, to be present while the evidence of the party or his or her witnesses is taken and to ask questions of the party or the witnesses.

### **Recording**

30. An audio recording of the hearing proceedings shall be made by the Council, but no recording shall be made at any time during the Standards Committee's deliberations or when the Committee is seeking advice from its Legal Advisor.

31. Access to the recording made under paragraph 30 may be granted, upon request, at any time after the hearing has ended, provided that no exempt or confidential information shall be publicly disclosed.
32. Save for the recording made under paragraph 30 no other digital recording, audio or visual or use of social media, shall be permitted during the hearing.

### **The procedure for a Hearing of the Standards Committee**

33. At the beginning of any hearing the Chair of the Standards Committee will:
  - (i) introduce each of the members of the Committee and everyone involved in the hearing;
  - (ii) explain the manner and order of proceedings; and
  - (iii) obtain confirmation from everybody taking part in the hearing that they have understood the procedure.
34. The Chair, having taken legal advice from the Legal Advisor, may agree to vary these procedures in any instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.
35. The Chair, having taken legal advice from the Legal Advisor, may also agree to vary this procedure in the interests of ensuring an efficient hearing (provided that such variation does not have any detrimental impact on the fairness of this procedure). Such power will include, for the avoidance of doubt:
  - (i) the ability to combine Stages 1 and 2 of this procedure set out below so that both the person who is the subject of the investigation and the Investigating Officer give combined submissions on both the facts and whether the facts amount to a breach of the Code of Conduct; and
  - (ii) the ability to request that the proceedings be conducted by exchange of written submissions only if the person who is the subject of the investigation so agrees.

### **Preliminary Procedural Issues**

36. The Committee should then resolve any issues or disagreements about how the hearing should continue, including whether all or part of the hearing should be heard without the attendance of the public.
37. If either party want to adduce further information to the Committee they should make an application to the Committee for permission to do so prior to the commencement of the formal part of the hearing. It will assist if the Legal Advisor and the other party have been provided with details of any late information which must be relevant to the alleged breach/es and must be provided to the Monitoring Officer as early as possible, but

in any event at least two working days before the commencement of the hearing. Late evidence will not be accepted at the hearing, unless the Committee is satisfied that there are exceptional circumstances. The Committee retains sole discretion whether to permit the late introduction of information but shall always seek to ensure that neither party is prejudiced and all parties are able to present the evidence which is relevant to the matters before the Committee.

### **Stage 1 – Formal Findings of Fact**

38. The Standards Committee can receive evidence of any fact that appears to it to be relevant even though such evidence would be inadmissible in proceedings before a court of law.
39. The Standards Committee will first consider whether or not there are any significant disagreements about the facts contained in the Investigating Officer's report. If there is no disagreement the Committee can move onto the next stage of the hearing.
40. If there is a disagreement as to the facts, the Investigating Officer, if present, will be invited to make any necessary representations to support the relevant finding of fact in the report. With the Standards Committee's permission, the Investigating Officer may call any necessary supporting witnesses to give evidence. The Committee shall give the person who is the subject of the investigation an opportunity to challenge any evidence put forward by any witness called by the Investigating Officer.
41. The person who is the subject of the investigation will then be invited to make representations to support his or her version of the facts and, with the Standards Committee's permission, to call any necessary witnesses to give evidence. The Committee shall give the Investigating Officer an opportunity to challenge any evidence put forward by any witness called by the person who is the subject of the investigation.
42. At any time, the Standards Committee may question any of the people involved or any of the witnesses.
43. If the person who is the subject of the investigation disagrees with any relevant fact in the Investigating Officer's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the Investigating Officer is not present, the Standards Committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the explanation of the person who is the subject of the investigation for not raising the issue at an earlier stage, the Committee may then;

- a. continue with the hearing, relying on the information in the Investigating Officer's report;
  - b. allow the person who is the subject of the investigation to make representations about the issue, and invite the Investigating Officer to respond and call any witnesses, as necessary; or
  - c. postpone the hearing to arrange for appropriate witnesses to be present, or for the Investigating Officer to be present if he or she is not already.
44. At the conclusion of the representations as to matters of fact the Chairman shall check with the members of the Standards Committee that they are satisfied that they have sufficient evidence to come to a conclusion on the matter.
45. The Committee shall then retire to consider their decision. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.
46. Once the decision is reached and the hearing re-convened, the Chair will announce the Committee's findings of fact.

**Stage 2- Did the Member fail to follow the Code?**

47. The Committee then needs to consider, based on the facts it has found, whether or not the person who is the subject of the investigation has failed to follow the relevant authority's Code of Conduct. It should be noted that this stage of the hearing does not provide either the person who is the subject of the investigation or the Investigating Officer an opportunity to re-examine the facts of the case in question.
48. The Standards Committee will invite the person who is the subject of the investigation to respond to the representations of the Investigating Officer and to make representations whether or not, based on the facts the Committee has found, he or she has failed to follow the Code of Conduct.
49. The Standards Committee will invite the Investigating Officer to make representation on whether or not, based on the facts the Committee has found, the person who is the subject of the investigation has failed to follow the Code of Conduct.
50. The Standards Committee may, at any time, question anyone involved on any point they raise in their representations.
51. The person who is the subject of the investigation will be invited to make any final relevant points.
52. The Standards Committee shall then retire to consider in private whether the Councillor did fail to comply with the Code of Conduct. Depending on the number of persons attending the hearing, the Committee will move to another

room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.

53. The Standards Committee shall take its decision on the balance of probability and based in the evidence which is received at the hearing.
54. The Standards Committee will reconvene in public and the Chair will state the Standards Committee's principal findings of fact and their determination as to whether the Councillor failed to comply with the Code of Conduct.

### **Stage 3 – Breach of the Code and Sanctions**

55. If the Standards Committee decides that there has been no breach of the Code of Conduct it will formerly record that there is no evidence of a failure by the person who is the subject of the investigation to comply with the Code of Conduct and no further action should be taken. Nevertheless, the Committee may make general recommendations to the relevant authority in question.
56. If the Standard Committee decides that there is evidence of a failure to comply with the Code of Conduct it will invite the person who is the subject of the investigation and the Investigating Officer to make representations as to:
  - (a) whether or not the committee should set a sanction; and
  - (b) what form any sanction should take.
57. The Committee may question the Investigating Officer and the person subject to the investigation and, if necessary, take legal advice, to make sure it has the information needed in order to make an informed decision.
58. The Standards Committee will consider the representations and shall then retire to consider in private whether no further action should be taken in respect of that failure to comply with the relevant authority's code of conduct, or whether the person who is the subject of the investigation should be censured, partially suspended or suspended for a period not exceeding six months. Depending on the number of persons attending the hearing, the Committee will move to another room to deliberate on the presentations and evidence in private or request the parties to leave the room during the deliberations.
59. The Standards Committee will then reconvene in public and the Chair of the Standards Committee will announce their decision.
60. The Committee may request the person subject to the investigation to take any remedial action it considers to be reasonable and proportionate in the circumstances, for example to apologise or attend training, and it may adjourn a decision on sanction to allow time for the requested remedial action to be taken prior to a decision on sanction.
61. After considering any verbal or written representations from the Investigating Officer and the person subject to the investigation (should they choose to do

so), the Committee will consider whether or not it should make any recommendations to the relevant authority concerned, with a view to promoting high standards of conduct among councillors and co-opted members.

### **The Written Decision**

62. The Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Panel will announce its decision on the day the decision is made and provide a short-written confirmation of its decision on that same day. It will issue a full written decision, with reasons, within ten working days from the end of the hearing, although this time may be extended by the Chair, in consultation with the Monitoring Officer, if necessary.
63. The Standards Committee will instruct the Democratic Services Officer to send a copy of the full written decision to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation and to the Public Services Ombudsman for Wales (the 'Decision Notification').

### **Suspension**

64. A period of suspension or partial suspension will commence on the day after whichever is the later of:
- a) The expiry of the time allowed to lodge a Notice of Appeal to an Appeals Tribunal of the Adjudication Panel For Wales (which is within 21 days of receiving the Decision Notification). The grounds and procedure for making such an application are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (as amended); or
  - b) Receipt of the notification of the conclusion of any appeal; or
  - c) A further determination by the Standards Committee made after receiving a recommendation from an appeals panel.

### **Referral by an Appeals Tribunal**

65. If
- (a) the Standards Committee determines that the person who is the subject of the investigation failed to comply with the Code of Conduct;
  - (b) that person appeals to an appeals tribunal drawn from the Adjudication Panel for Wales; and
  - (c) the said tribunal refers the matter back to the Standards Committee with a recommendation that a different penalty be imposed the Standards Committee shall meet as soon as reasonably practicable to consider the recommendation of the appeals tribunal and will

determine whether it should uphold its original determination or accept the recommendation.

66. After making its determination the Standards Committee will secure that its determination and the reasons for the determination are committed to writing. The Standards Committee will instruct the Democratic Services Officer to send a copy of the written record of the determination to the person who is the subject of the investigation, to the person who made any allegation, which gave rise to the investigation, to the Public Services Ombudsman and to the President of the Adjudication Panel for Wales.

### **Publication**

67. The Standards Committee will cause to be produced within 14 days after:
- (a) The expiry of the time allowed to lodge a notice of appeal under Regulation 10(2) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001;
  - (b) receipt of notification of the conclusion of any appeal in accordance with Regulation 12(a)(i) or (b) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001; or
  - (c) a further determination by the Standards Committee made after receiving a recommendation from an appeals tribunal under Regulation 12(a)(ii) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001,

whichever occurs last, a report on the outcome of the investigation and send a copy to the Public Services Ombudsman for Wales, the Monitoring Officer and Proper Officer of the relevant authority concerned, the person subject to the investigation and take reasonable steps to send a copy to any person who made any allegation which gave rise to the investigation.

68. Upon receipt of the report of the Standards Committee, the Monitoring Officer shall:
- (a) For a period of 21 days publish the report on the Council's website and make copies available for inspection by the public without charge at all reasonable hours at one or more of the Council's offices, where any person shall be entitled to take copies of, or extracts from, the report when made so available,
  - (b) supply a copy of the report to any person on request if he or she pays such charge as the Council may reasonably require, and

- (c) not later than 7 days after the report is received from the Standards Committee, give public notice, by advertisement in a newspaper circulating in the area of the Council and such other ways as appear to him or her to be appropriate, that copies of the report will be available as provided by sub-paragraphs (a) and (b) above, and shall specify the date (being a date not more than seven days after public notice is first given) from which the period of 21 days will begin.

**Costs**

- 69. The Standards Committee has no power to make an award of any costs or expenses arising from any of its proceedings.

Adopted by the Standards Committee on 19<sup>th</sup> March 2021





## **RHONDDA CYNON TAF**

### **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

#### **STANDARDS COMMITTEE**

**19 MARCH 2021**

#### **LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021 AND THE STATUTORY ETHICAL FRAMEWORK**

#### **REPORT OF THE MONITORING OFFICER**

#### **1. PURPOSE OF REPORT**

To inform the Committee of changes to the statutory ethical framework, which are being introduced by Part 4 of the Local Government and Elections (Wales) Act 2021 and seek agreement of the actions to be taken in response.

#### **2. RECOMMENDATION**

2.1 The Committee is recommended to:

2.1.1 note the information set out in the report;

2.1.2 recommend to Council that the Committee's terms of reference be amended as set out in paragraph 4.5, once the new legislation is brought into force; and

2.1.3 notes Welsh Government is proposing to undertake a review of the Statutory Ethical Framework in Wales ahead of the Local Government Elections in 2022 and information in respect of this review will be presented to Committee as and when it becomes available.

#### **3. BACKGROUND**

3.1 The Local Government Act 2000, Part III (and associated regulations made thereunder) provides an ethical framework in respect of the conduct of local government members. Key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members and co-opted Members of the authority.

#### **4. LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021**

- 4.1 The [Local Government and Elections \(Wales\) Act 2021](#) ('the Act'), which received Royal Assent on 20th January 2021, provides for the establishment of a new and reformed legislative framework for local government elections, democracy, performance and governance. Within Part 4 of the Act, changes are made to the statutory ethical framework set under Part III of the Local Government Act 2000. These new legislative provisions are not yet in force, but are to be brought into effect on specified dates by commencement orders, which will be issued by the Welsh Government. The Welsh Government are reviewing the ethical framework and the model Code of Conduct in the light of the Act.
- 4.2 In relation to the current changes to the ethical framework, the Act will:
- (a) Require leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups, and to co-operate with standards committees (due to take effect from May 2022);
  - (b) Require standards committees to produce annual reports on the exercise of their functions (due to take effect after, and in relation to, the financial year 2022/23); and
  - (c) Consolidate provision about investigations by the Public Services Ombudsman for Wales into the conduct of members of local government.
- 4.3 The Explanatory Memorandum accompanying the Local Government and Elections (Wales) Bill during its passage through the legislative process explains the purpose and intended effect of the new legislation relating to political group leaders and standards committees as follows:

##### **Ethical framework**

*3.125 Engendering a culture within a principal council which embraces high standards of conduct requires both local leadership and all members to accept responsibility for their actions both individually and collectively.*

*3.126 The White Paper 'Reforming Local Government: Power to Local People' stated that councils must be places where an open culture thrives and people are made to feel welcome and respected, whatever ever their background, if a more diverse range of people to be encouraged to seek elected office in local government. The White Paper noted that standards of behaviour were key to this and expressed concern that an overly 'macho' culture in some authorities might be acting as a deterrent to women, in particular, standing for office.*

*3.127 To complement the existing statutory ethical framework, the White Paper proposed that those in positions of leadership and influence within a principal council should have responsibility in respect of the promotion of diversity and to combat bullying and harassment amongst elected members and council staff.*

*3.128 The Bill provides that leaders of political groups must take reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the council's standards committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a standards committee has new functions under the Bill to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties.*

*3.129 Local standards committees play an important role in supporting members, individually and collectively, to develop and maintain a culture which embraces high standards of conduct. It is important that standards committees review their work periodically and report significant matters they have dealt with and any emerging trends to their council. Standards committees will be required after the end of each financial year to make an annual report to the authority describing how the committee's functions have been discharged during the financial year and setting out an overview of conduct matters within the council. The council will be obliged to consider the report and any recommendations made by the standards committee within 3 months of receipt.*

- 4.4 In light of the above and once the provisions of the Act come into force the Committee will need to establish arrangements for meeting with Group Leaders to discuss Member conduct issues and ensure Group Leaders have appropriate access to advice and training to support them with their new duties as well adopting a mechanism to ensure compliance with those new duties.
- 4.5 In order to reinforce the new duties in relation to Group Leaders (once they are in force), it is proposed to amend the Standards Committee's terms of reference by adding the following point: '(o) to monitor compliance by political group leaders with their duties in relation to Member conduct (under section 52A(1) of the Local Government Act 2000), and to advise, train or arrange training for political group leaders in relation to those duties.' Any amendment to the Committee's terms of reference requires the approval of full Council.
- 4.6 The Welsh Local Government Association has confirmed that they are working on a generic role description for Group Leaders, given their new responsibilities, which will be circulated to Heads of Democratic Services and Monitoring Officers.
- 4.7 Any further action to be taken by the Committee in relation to the new legislative provisions concerning group leaders will be kept under review and considered under the Committee's Work Programme.
- 4.8 Members will know that the Committee has well established arrangements for presenting its annual report to full Council. Nevertheless, it is proposed that the Committee should take the opportunity to review the structure, contents and timescale of its annual report from 21/22 onwards, having regard to the new legislative provisions. Under the new legislation, the Committee's annual report must be made 'as soon as reasonably practicable after the end of each financial year... in respect of that year.' This represents a change to the practice in Rhondda Cynon Taf, which up

to now has been to report on municipal years (running from the Annual Council meeting in May). The requirements of the new legislation are not scheduled to take effect until the 2022/23 financial year.

- 4.9 With regard to investigations by the Ombudsman, the Act consolidates provisions relating to practical matters such as conflicts of interest, powers to obtain and disclose information and protection from defamation proceedings. No substantive change is being made to the current law.

**5. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report. Any associated costs of providing training and advice for political group leaders would be met from the allocated budget.

**6. LEGAL IMPLICATIONS**

Relevant legal provisions are set out in the body of the report.

**7. CONCLUSION**

The Act will bring into force changes to the ethical framework in Wales relating to the conduct of Members which will require changes to the Standards Committees terms of reference as outlined in the report.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**STANDARDS COMMITTEE**

**19 MARCH 2021**

**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

**Freestanding Matter**

**Contact:** Mr. Andy Wilkins (Director of Legal Services & Monitoring Officer)

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# DRAFT

## Standards Committee

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Annual Report  
2019-20 and 2020-21



**RHONDDA CYNON TAF**



**Mr M. Jehu MBE**

# Standards Committee Annual Report 2019-20 and 2020-21

## Chairman's Foreword

As Chairman of the Standards Committee, I am pleased to present the Standards Committee Annual Report for the 2019/20 and 2020/21 Municipal Years. The report aims to capture the work which the Standards Committee has undertaken during the period, through the use of our fluid work programme, which has ensured robust discussion at each of our meetings.

The Standards Committee consists of Independent Members, County Borough Councillors and Community Councillors, who work alongside officers to ensure that the Council adheres to good governance and promotes the highest standards of conduct among Elected Members and officers. As ever, I would like to thank my fellow Committee Members for their invaluable contribution at meetings. It is evident that there is a wealth of knowledge among Members, which drives forward the core values of the Standards Committee. Furthermore, I would like to extend my thanks to officers for their continuous support provided to the Committee throughout the past two years.

I think it is essential to mention that through its work, the Standards Committee encompasses the Council's priorities, whilst having full regard to the Well-being of Future Generations Act and shared vision set out in the seven national well-being goals. The work undertaken seeks to improve working arrangements for the Council and its residents, whilst focussing on the long-term vision. By actively taking forward the Council's 'paper light' approach, the Standards Committee is making a positive contribution to a globally responsible Wales.

Due to the Covid-19 pandemic, the Standards Committee, like all other Council Committees, has had to adapt to agile working and I am pleased to say that with the support of officers, the Committee have managed to successfully continue its duties and attend meetings via the Zoom video conferencing application.

Despite the challenges, during both Municipal Years, we have closely monitored the reports of the Monitoring Officer, and those published by the Public Services Ombudsman for Wales and where necessary, we have taken action to ensure that County Borough Councillors, Community/Town Councillors and Officers are reminded of their requirements in relation to the different policies. In 2021/22, the Standards Committee will continue to proactively focus on promoting high ethical standards within the Local Authority for the benefit of the public. We will establish a robust work programme, in line with the Committee's Terms of Reference, in order to effectively assist with our role. In addition, we look forward to divulging the aspects in relation to the Standards Committee, which may arise from the Local Government and Elections (Wales) Act 2021. I am also pleased to report there were no referrals made to the Standards Committee by the Public Services Ombudsman for Wales during the period of this report or complaints brought before us under the Council's Local Resolution Protocol.

It is important for the Standards Committee to continue to share good practice and work collaboratively where possible. We welcome the opportunity to once again, engage with our colleagues at Merthyr Tydfil County Borough Council to observe future misconduct Hearings, in order to cross reference and potentially, learn from one another's experiences.

Finally, when it is safe to do so, the Standards Committee look forward to participating in the next Standards Conference Wales Event, following the success of the 2018 event.

**Mel Jehu MBE - Chairman of the Standards Committee  
Rhondda Cynon Taf County Borough Council**



# Membership of the Standards Committee



Mr M. Jehu MBE



Mr D. Bowen



Mr J. Thomas



Cllr. M. Forey



Cllr. E.J. Webster



Cllr. R. Butler

**Chairman (and Independent Member):** Mr Mel Jehu MBE

**Vice-Chair (and Independent Member):** Mr D. Bowen

**Independent Member:** Mr J. Thomas

**Reserve Independent Member:** Mr C. Pallant (Resigned 2020)

**County Borough Councillor:** M. Forey

**County Borough Councillor:** E. Webster

**Community Councillor:** Mr R. Butler

**Reserve Community Councillor:** Ms. C. Willis

# Terms of Reference of the Standards Committee

## The Standards Committee has the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted Members and Church and Parent Governor representatives;
- (b) assisting the Councillors, co-opted Members and Church and Parent Governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors, co-opted Members and Church and Parent Governor representatives on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors, co-opted Members and Church and Parent Governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that Officer by the Public Services Ombudsman For Wales;
- (h) overview of the Council's whistleblowing policy;
- (i) overview of complaints handling and Ombudsman investigations (please note this will become a function of the Audit Committee);
- (j) oversight of the Members' protocols adopted by the Council;
- (k) oversight of the register of personal interests maintained under Section 81 of the Local Government Act 2000;
- (l) oversight of the gifts and hospitality register;
- (m) monitor adherence to the Council's Management of Unreasonably Persistent Customers Policy by Group and Service Directors; and
- (n) the Committee will exercise the functions set out in (a) - (g) above in relation to Community Councils and Members of Community Councils.

The Standards Committee is required to meet at least once annually in accordance with the Local Government Act 2000. In practice, the Committee meets on a scheduled quarterly basis (dependant on business needs) and additional special meetings are arranged, as necessary, to deal with specific matters such as misconduct hearings.

## The Standards Committee met on four occasions during the two Municipal Years:

\* 20th September 2019  
\* 29th November 2019

\* 27th November 2020  
\* 19th March 2021

**The Committee's Work Programme for the current Municipal Year can be found [here](#).**

# Standards Committee during the 2019-2020 Municipal Year

## Standards Reporting

- **Public Services Ombudsman for Wales Complaints against Members during 1st April 2018 – 31st March 2019**
  - There were five anonymised complaints made against Members and submitted to the Ombudsman; and
  - There were no Ombudsman investigations and no evidence of breach in relation to the complaints.
- **Public Services Ombudsman For Wales' Annual Report and Letter (2018 – 2019)**
  - Of the total 282 complaints made, 147 related to Town/Community Councils, 102 to Local Authorities and 1 to a National Park Authority;
  - 255 of the complaints had been closed after initial consideration with a further 36 closed after full investigation;
  - Of the seven complaints received with potential breaches of the Code of Conduct for members of this Council and Community/Town Councils in RCT, two did not meet the PSOW criteria for investigation and two were discontinued as they were no longer in the public interest; and
  - Of the cases the PSOW investigated and closed, four cases were referred to the Adjudication Panel for Wales.
- **Public Services Ombudsman For Wales – Code of Conduct Casebooks**

These reports provide the Committee with a general insight into the complaints made across Wales as contained in the Ombudsman's case books which are published quarterly; and Provides the Committee with a benchmark for National Standards.

## Applications for Dispensations

**The Standards Committee have determined a number of applications for dispensations under the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 in accordance with the Council's agreed procedures.**

During the Municipal Year, there were two applications for dispensation, all of which were granted by the Standards Committee.

# Standards Committee during the 2019-2020 Municipal Year

## Member's Training and Development

The Committee acknowledges that the primary role of monitoring Members' training and development falls on the Council's Democratic Services Committee. However the Committee does have a specific role in overseeing Code of Conduct training.

As such, the Standards Committee showed commitment to:

- Promoting the delivery of training for elected Members;
- Monitoring the delivery and attendance at "Code of Conduct" training sessions provided for both County Borough and Community/Town Councillors; and
- Monitoring the delivery of electronic and social media training for Elected Members in the context of standards and ethics.

## Councillor's Guide to Handling Intimidation

The Committee received an informative link to the 'Councillors guide to handling intimidation' launched by the LGA and WLGA.

The Committee acknowledged that social media can sometimes impact and influence negative behaviour and agreed that it was essential for all Members to understand that intimidating behaviour cannot be tolerated in any situation.

## Review of Gifts and Hospitality Policy and Associated Register

The Standards Committee monitored adherence to the Council's 'Gifts and Hospitality' Policy the declarations made by Members and Officers in respect of the acceptances or refusals of gifts and hospitality.

The Standards Committee agreed for the Policy to be circulated to all Elected Members and Community Councillors, reminding them of their requirements. The Committee also agreed that there was a need for the register to be reviewed to ensure its compliance with GDPR.

# Standards Committee during the 2020-2021 Municipal Year

## Standards Reporting

- **Public Services Ombudsman for Wales Complaints against Members during 1st April 2019 – 31st March 2020**
  - There were 21 anonymised complaints made against Members and submitted to the Ombudsman; 4 of which had been investigated by the Ombudsman.
  - The Standards Committee noted that the Chair and Monitoring Officer had visited one of the Community Councils, which was responsible for 18% of the total number of complaints received by the Ombudsman during the period. It was pleasing to note that the intervention appeared to have been effective in preventing further escalation. It was agreed that, when safe to do so, the Committee would visit the Community Councils in the area to observe their meetings and report back to the Committee on those observations
- **Public Services Ombudsman For Wales' Annual Report and Letter (2019 – 2020)**
  - Of the total 231 complaints made concerning alleged breaches of the Code of Conduct across Wales. 135 related to Town/Community Councils, 96 to Local Authorities.
  - 202 of the complaints had been closed after initial consideration with a further 33 closed after full investigation; and
  - Of the 33 cases, in 7 cases an investigation was discontinued, 9 no evidence of breach was found, 12 no further action was necessary and there were 5 referrals (to either Standards Committees or the Adjudication Panel for Wales).
  - The majority of Code of Conduct Complaints received during 2019/2020 related to matters of 'promotion of equality and respect' (49%) and 'disclosure and registration of interests' (17%).
- **Public Services Ombudsman For Wales – Code of Conduct Casebooks**

These reports provide the Committee with a general insight into the complaints made across Wales as published in the quarterly Ombudsman case books; and provide the Committee with a benchmark for National Standards.

## Applications for Dispensations

**The Standards Committee have determined a number of applications for dispensations under the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 in accordance with the Council's agreed procedures.**

During the Municipal Year, there were three applications for dispensation, all of which were granted by the Standards Committee.

# Standards Committee during the 2020-2021 Municipal Year

## Member's Training and Development

**The Committee acknowledges that the primary role of monitoring Members' training and development falls on the Council's Democratic Services Committee. However the Committee does have a specific role in overseeing Code of Conduct training.**

**As such, the Standards Committee showed commitment to:**

- Promoting the delivery of training for elected Members;
- Monitoring the delivery and attendance at "Code of Conduct" training sessions provided for both County Borough and Community/Town Councillors; and
- Monitoring the delivery of electronic and social media training for elected Members.

During the Municipal Year Members also considered proposed revisions being (at that time) consulted upon by the Public Services Ombudsman for Wales' to his Code of Conduct Guidance for Members and Co-opted Members of Principal Councils and his separate guidance for Community and Town Councillors.

## Adjudication Panel for Wales - Recent Tribunal Decisions

**The ethical framework set under Part III of the Local Government Act 2000 includes the establishment of the Adjudication Panel for Wales (APW) as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Members' Code of Conduct.**

The Committee were in agreement that considering the approach adopted by the APW in formulating its decisions and sanctions was beneficial to the Committee, in light of its own role when conducting Code of Conduct Hearings and welcomed the information presented in respect of recent decisions made by the APW.

## Adjudication Panel for Wales - Presidential Guidance

**The Adjudication Panel for Wales has issued updated Presidential Guidance on:**

- (i) The Role of the Monitoring Officer;**
- (ii) Anonymity; and**
- (iii) Disclosure of evidence, within APW proceedings ('the APW Guidance').**

**The Guidance is not legally binding and is provided to assist Monitoring Officers, the parties involved, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales ("APW") proceedings.**

The Standards Committee acknowledged that whilst the guidance did not apply to proceedings before the Committee's Hearings Panel, they were pleased to note that updated guidance on the disclosure of evidence as part of an Ombudsman's investigation had been issued to assist Monitoring Officers in their duty in that regard.

# Standards Committee during the 2020-2021 Municipal Year

## Update on Town and Community Council - Use of their Local Resolution Protocols

The Ombudsman's guidance on the Code of Conduct for Community and Town Councils encourages the use of local resolution for low level complaints. The Council adopted a local protocol in January 2011 which was revised in July 2013.. To support that process for Town and Community Council's One Voice Wales produced a template protocol, which is relatively simple in nature and which could be adapted and adopted as necessary. Every Town and Community Council has now adopted a local resolution policy.

Members were provided with an update on Town & Community Council's use of their Local Resolution Protocol and welcomed that of the twelve Community/Town Councils, ten reported there had been no requirement for the protocol to be used during the period 1st January 2020 – 28th February 2021. Two reported complaints had been received but none had reached the formal hearing stage.

## Procedures for dealing with complaints referred by PSOW

The Ombudsman may refer a misconduct complaint to the Monitoring Officer under section 70(4) or section 71(2) of the Act. A referral under section 70(4) requires the Monitoring Officer to conduct an investigation into the complaint and then submit an investigation report to the Standards Committee for determination of the complaint. A referral under section 71(2) is made when the Ombudsman has investigated the complaint and requires the Monitoring Officer to consider the investigation report and submit it, with recommendations, to the Standards Committee for determination.

The Committee reviewed the procedures for dealing with complaints referred to the Committee by the Public Services Ombudsman for Wales or by the Monitoring Officer and considered whether any amendments were required to be made to those procedures following their introduction in April 2011. Having considered the report of the Monitoring Officer a number of changes were approved to be made to reflect current legislative requirements, clarify certain procedures and ensure they remain fit for purpose.

# Standards Committee during the 2020-2021 Municipal Year

## Update on the Local Government and Elections (Wales) Bill

The Local Government Act 2000, Part III (and associated regulations made thereunder) provides an ethical framework in respect of the conduct of local government members. Key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members and co-opted Members of the authority. The Local Government and Elections (Wales) Act 2021 ('the Act') provides for the establishment of a new and reformed legislative framework for local government elections, democracy, performance and governance. Within Part 4 of the Act, changes are made to the statutory ethical framework set under Part III of the Local Government Act 2000.

The Standards Committee gave consideration to the future provisions of the Act and the changes to the ethical framework in Wales relating to the conduct of Members which will require changes to the Standards Committee's Terms of Reference with specific reference to the new requirement on leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups, and to co-operate with standards committees (due to take effect from May 2022).

## Adjudication Panel for Wales Annual Report 2019-2020

The Adjudication Panel for Wales produces an Annual Report summarising the activity of the Panel during the relevant reporting period.

Members considered its latest published Annual Report for 2019-2020 which provides details of the membership of the Panel, an analysis of its performance and a useful section summarising cases and decisions made by the Panel during the reporting period.