



**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: Marc Jones - Council Business Unit (07385 401845)

YOU ARE SUMMONED to a hybrid meeting of **STANDARDS COMMITTEE** to be held on **FRIDAY, 19TH NOVEMBER, 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 November 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 24th September 2021.

REPORT OF THE MONITORING OFFICER

3. ADJUDICATION PANEL FOR WALES - RECENT TRIBUNAL DECISIONS

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

9 - 30

4. PUBLIC SERVICES OMBUDSMAN FOR WALES - SUMMARY OF COMPLAINTS - 01.04.2021 - 31.10.2021

To receive a summary of Complaints against Members from the 1st April 2021 – 31st October 2021

31 - 38

5. DISPENSATION APPLICATIONS

To consider three applications for dispensations made in accordance with The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001.

39 - 50

6. PUBLIC SERVICES OMBUDSMAN FOR WALES - ANNUAL REPORT AND LETTER 2020 - 2021

To receive a summary of Code of Conduct matters as set out in the Ombudsman's Annual Report and Letter to this Council 2020 – 2021.

51 - 74

7. REVIEW OF THE ETHICAL STANDARDS FRAMEWORK IN WALES

To advise Members of the publication of the report into Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

75 - 98

REPORT OF THE SERVICE DIRECTOR, DEMOCRATIC SERVICES & COMMUNICATION

8. MEMORANDUM OF UNDERSTANDING

To provide Members with a draft Memorandum of Understanding for Members comment and feedback to the Democratic Services Committee before its presentation to full Council.

99 - 104

9. 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

This page is intentionally left blank



RHONDDA CYNON TAF COUNCIL STANDARDS COMMITTEE

Minutes of the meeting of the Standards Committee held virtually on Friday, 24 September 2021 at 10.00 am.

Standards Committee Members in attendance:-

| | |
|--------------------------------|----------------------|
| Mr M Jehu (Chair) | Councillor E Webster |
| Councillor M Forey | Mr J. Thomas |
| Community Councillor R. Butler | Mr D. Bowen |
| Community Councillor C. Willis | |

Officers in attendance:-

Mr A Wilkins, Director of Legal Services and Monitoring Officer
Mr P Nicholls, Service Director of Legal Services and Deputy Monitoring Officer

22 WELCOME

The Chair welcomed Committee Members, Officers and Observers to the virtual meeting of the Standards Committee.

23 Declaration of Interest

In accordance with the Council's Code of Conduct, Councillor R. Butler declared the following personal interest in Item 4 and 5 of the agenda 'I am a Community Councillor for Llantwit Fardre Community Council, which is referenced throughout the report. I will not take part in this item but will remain in the meeting whilst the items are being discussed'.

24 Minutes

It was **RESOLVED** to approve the minutes of the 19th March 2021 as an accurate reflection of the meeting, subject to it being noted that Mr M Jehu MBE name was omitted from the minutes as being in attendance.

25 Matters Arising

Page 4 of the minutes – In response to a query raised in relation to Code of Conduct training for Community Councillors and if they are to receive separate guidelines, the Monitoring officer report that this would be included as part of the wider review being undertaken by Welsh Government.

Page 6 – The Monitoring officer reported that the new Ombudsman Code of Conduct Guidance has now been finalised and published and will be circulated to all Members shortly. The Monitoring Officer also advised Members that the outcome of Welsh Government’s review into the Ethical Standards Framework in Wales was yet to be published and Committee would be kept updated as it develops.

26 Standards Committee Work Programme

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 2021-2022.

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 2021-2022 was detailed. The Work Programme sought to reflect the ongoing priorities, standard reports and the frequency of reporting for the Committee’s consideration.

Following discussions, the Standards Committee **RESOLVED:**

1. To adopt the Standards Committee Work Programme for the 2021/2022 Municipal Year subject to any matters that arise during the year being able to be considered as necessary.

27 Public Services Ombudsman for Wales - Code of Conduct Casebook

In his report, the Monitoring Officer provided the Committee with Code of Conduct Casebook (Issue 24) produced by the Public Services Ombudsman for Wales.

Members noted that the casebook used to be published on a quarterly basis however, the most recent casebook reflects matters pertaining to the whole of the 2020 calendar year and the casebooks appear as though they will now be published annually.

Reference was made to a complaint concerning Llantwit Fardre Community Council again a matter previously discussed by the Committee. By way of an update the Chair has discussed with the Monitoring officer the possibility of a follow up visit and arrangements will be made with the Clerk in that respect.

The Monitoring officer informed Members that the Adjudication Panel is already processing six referrals in this financial year which suggests there is a worrying trend for cases which are investigated by the Ombudsman

and a potential breach found to be of such seriousness they warrant referral to the Adjudication Panel for Wales, to which five of those six complaints involve allegations that the member brought their Council or office into disrepute.

Following consideration thereof, it was **RESOLVED**:

1. To note the information contained within the report.
2. To note they will receive the casebook annually.

(Note: Having previously declared an interest (Minute No. 4), Community Councillor R. Butler did not participate in this item.)

28 PUBLIC SERVICES OMBUDSMAN FOR WALES - SUMMARY OF COMPLAINTS 2020-2021

The Monitoring officer provided Members with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st April 2020 – 31st March 2021.

Members noted the summary of anonymised complaints made against Members and submitted to the Ombudsman for the period 1st April 2020 – 31st March 2021 contained within the report.

Members were reminded in determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test. At the first stage, he will aim to establish whether there is direct evidence that a breach of the Code has occurred. At the second stage the Ombudsman considers whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest, which involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public's expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation is proportionate in the circumstances.

Members were provided with detail on each complaint whilst ensuring anonymity is retained.

Members found the Ombudsman's comments and conclusions on each matter helpful to understand how they approach dealing with a complaint.

The Monitoring officer outlined to Members a comment made by the Ombudsman whereby he stated that he has limited investigative resources and must decide which complaints should be investigated after considering the individual merits of each case. In exercising that discretion, the Investigating Officer considered both the nature of the complaint made and whether the prospect of achieving a worthwhile outcome was sufficient to justify an investigation.

It is therefore noted this is a common theme throughout the complaints that the Ombudsman will only investigate where they consider a standards committee is highly likely to impose a sanction by way of a suspension.

The Monitoring officer draw Members 'attention to the fact there were 9 complaints made against County Borough Members compared to zero complaints in the previous reporting period, none of which reached the investigation stage. 3 of the complaints related to the same member and incident.

An observation was made by the Chair to Committee to shorten reporting periods so that Members receive information quarterly to better identify any common themes/trends coming through in the complaints, to which they agreed they were happy with.

Following consideration thereof, it was RESOLVED:

1. To note the information contained within the report
2. To receive the summary of complaints report on a quarterly basis to coincide with Committee meetings

29 Urgent Business

Members queried whether future meetings of this Committee were able to be held face-to-face as restrictions surrounding the pandemic have been lifted in Wales.

In response, the Monitoring officer replied that future meetings can now be held in the Council Chamber as this has been fully renovated and is well equipped with the ability to operate through a hybrid approach, which will give the Committee Members the option to attend meetings virtually or face-to-face as they see fit.

This meeting closed at 10.43 am

**MR. M. JEHU
CHAIR.**



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 NOVEMBER 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 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 the decision 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/003/2020-021/CT – Councillor David Poole

Appendix 2 – APW/002/2020-021/AT – Councillor Richard Mainon (Appealing a Standards Committee decision)

- 3.3 The Committee may find it helpful to consider these 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 the 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 NOVEMBER 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)

This page is intentionally left blank

**PANEL DYFARNU CYMRU
ADJUDICATION PANEL FOR WALES**

DECISION REPORT

TRIBUNAL REFERENCE NUMBER: APW/003/2020-021/CT

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

RESPONDENT: Councillor David Vincent Poole

RELEVANT AUTHORITY: Caerphilly County 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 The Case Tribunal determined its adjudication by way of written representations at a meeting on 28 June 2021 which was conducted by video. Its reasons for doing so were set out in the Listing Direction dated 29 April 2021 at paragraph 2.6 [A3].
- 1.3 References in square brackets within this Decision Report are to sections and pages within the bundle of Tribunal Case Papers unless otherwise stated.

2. PRELIMINARY DOCUMENTS

2.1 Reference from the Public Services Ombudsman for Wales

- 2.1.1 In a letter dated 23 February 2021, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against the Respondent [E367]. The allegations were that the Respondent had breached Caerphilly County Borough Council’s Code of Conduct in that he;
- (i) Used his position to secure an advantage by deciding to buy shares in a company, IQE plc, on the basis of confidential information that he had received through his position as a Councillor at a meeting on 8 October 2018 (alleged breach of paragraph 7 (a) of the Code) and thereby brought the Authority and his office as a member into disrepute (alleged breach of paragraph 6 (1)(a) of the Code);
 - (ii) Failed to disclose a personal interest and/or withdraw from a meeting on 18 February 2019 when a matter in which he had a

prejudicial interest was being discussed, namely financial dealings with that same company (alleged breaches of paragraphs 11 (1) and 14 (1) of the Code).

2.1.2 The circumstances leading to the alleged breaches were as set out above and, in more detail, in the factual findings which follow below.

2.2 The Councillor's Written Response to the Reference

2.2.1 Although the Respondent was interviewed as part of the Ombudsman's initial investigation, he did not respond to the Adjudication Panel's subsequent communications. A copy of the Ombudsman's Report was forwarded to him by the Adjudication Panel on 24 February 2021 by email [E383-6]. He was directed to reply to the allegations in the Report in accordance with paragraph 3 (1) of the Schedule of the Adjudications by Case Tribunals and Interim Case Tribunal's (Wales) Regulations 2001 by 17 March 2021. He did not reply to that correspondence. By a letter dated 24 March 2021 [E430], which was sent to him both by email and post, the Adjudication Panel informed him that, as a result of his failure to respond by the deadline of 17 March 2021, the case papers were being forwarded to this Case Tribunal. Again, no response was received to that communication.

2.2.2 The Relevant Authority confirmed the accuracy and use of the Respondent's email addresses and the Listing Direction confirmed the Tribunal's approach in light of the Regulations (see paragraphs 2.4 and 2.5 [A4]).

2.2.3 On 4 May 2021, however, the Respondent did contact the Adjudication Panel, he apologised for his earlier failures to make contact and then set out his position in relation to the case against him [E452-3]. The extent to which the contents of the email advanced his case beyond the information already received is considered below.

2.3 The Ombudsman's Written Representations

2.3.1 No further representations were made.

3. FINDINGS OF FACT

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

3.1.1 The Respondent was, at all times relevant, the leader of Caerphilly County Borough Council. He had been Leader since May 2017, having become a Councillor in May 2004.

3.1.2 He received training on the Council's Code of Conduct in May 2017 and undertook to observe the Code whilst fulfilling the duties of his office [B49, 61 and 281].

- 3.1.3 In his role, he attended Cardiff Capital Region (CCR) City Deal Regional Cabinet Meetings, a joint working arrangement between 10 Councils of the Cardiff Capital Region. Amongst other things, the Cabinet decided to invest in the CSC Project, a scheme designed to breathe new economic life into south east Wales through the creation of a manufacturing hub for semi-conductors. A company, CSC Foundry Ltd ('CSC'), was incorporated as a special-purpose vehicle in July 2017 to enable the CCR to give effect to its plans for the region. All 10 interested Councils had representatives acting as directors of CSC [B201].
- 3.1.4 At a CCR City Deal Regional Cabinet Meeting on 8 October 2018, the Respondent was present when a report prepared by Monmouthshire County Council the lead authority to CSC, and marked '*Confidential Appendix 1*', was considered [B192-199]. The report contained a number of appendices [B200 and following].
- 3.1.5 The documentation contained details of the financial arrangements between CSC and IQE plc ('IQE'), a company which had been engaged to work with CSC, the Welsh Government and the CCR City Deal to transform a disused building in Newport into the hub for the manufacture of semi-conductors for which it received a £38m grant. CSC controlled and managed that grant to IQE.
- 3.1.6 Contained within the report and its appendices were information about the level of IQE's investment and factors which affected its profitability (tooling costs, capacity and productivity). The report considered that productivity was "*significantly exceeding plan*", with a likely resultant acceleration to the 'tipping point' at which IQE achieved profitability (paragraph 9 [B194]). Further, within the appendices, an independent opinion was expressed about the likely consequent trajectory of IQE's share price by a well known firm of investment consultants, GVA [B234-5];
- "Whilst IQE's share price has dipped in recent months, we have been provided with evidence from analysts and the company's chairman to suggest that the share price should increase strongly again."* [B235]
- 3.1.7 The Respondent bought shares in IQE to the value of £2,034.55 on 22 October 2018 [B345]. He subsequently informed the Ombudsman that he had made the purchase with a view to making a profit [B303]. As a result, he believed that he had personal and prejudicial interests in respect of IQE [B293].
- 3.1.8 In January 2019, the Respondent attempted to amend his Register of Interests to reflect his ownership of shares in IQE. Following advice from the Monitoring Officer, no amendment was made. He was advised that, because of the level of his shareholding and the fact that the business was based outside the Council's area, it was not necessary to make any amendment [B125, 272-4 and 288-9].

- 3.1.9 On 21 January 2019, the Respondent reinvested dividends from his IQE shares by buying a further interest to the value of £111.57 [B346]. A further reinvestment of £111.33 was made on 31 May 2019 [B347].
- 3.1.10 At a CCR City Deal Regional Cabinet Meeting which took place on 18 February 2019, the Respondent made no declaration of interest regarding IQE (paragraph 2 [B252-6]). Amongst the matters discussed at that meeting was the Welsh Audit Office Review of the Cabinet's investment decisions, such decisions having included the grant to IQE (paragraph 11 [B256]). The Respondent remained in the room throughout the meeting [B291-2].
- 3.1.11 At a CCR City Deal Regional Cabinet Meeting on 29 April 2019, the Respondent *did* declare an interest regarding IQE and left the room during discussions which concerned CSC and/or IQE ([B257-262] and [B293-4]). After the meeting, he did not contact the Monitoring Officer to inform him of any change in respect of his registered interests [B294].
- 3.1.12 On 3 June 2019, at the prompting of the Deputy Monitoring Officer, the Respondent amended his Register of Interests to include IQE ([B96-101] and [B296-7]).
- 3.1.13 At a further CCR Cabinet Meeting which took place on 10 June 2019, the Respondent followed the same course of conduct ([B263-270] and [B299]).
- 3.1.14 The Respondent's declared interest was then discussed between him, officers from the Welsh Audit Office and the Monitoring Officer on 29 August 2019.
- 3.1.15 The Respondent sold his shares in IQE on 9 September 2019 for £1,244 [B348] and amended his Register of Interests to delete IQE [B107].
- 3.1.16 On 16 September 2019, the Respondent then referred himself to the Ombudsman [B33-4]. Within the letter, he stated that he understood that, in accordance with paragraph 11 (4) of the Code, he should have notified the Monitoring Officer of his declared interest at the meeting on 29 April 2019. He also stated that;
"..with the benefit of hindsight, by purchasing shares in IQE, I was preventing myself becoming involved in any decisions of CCR around IQE and the hoped for wider compound semiconductor industry growth in the area."
- 3.2 The Case Tribunal reached the following findings on the **disputed** material facts which were identified within the Annex to the Listing Direction on the balance of probabilities [A8]:

- 3.2.1 Whether the Respondent sought to benefit from information which he obtained as a result of his involvement in the meeting of 8 October 2018 by buying shares in IQE;
- 3.2.1.1 The Respondent had access to the confidential information referred to at the meeting of 8 October 2018. Although initially stating that he could not remember whether he had access, he accepted that he would have done when he was interviewed as part of the Ombudsman's investigation (see [B306] where he accepted that he would have had access it "*without a doubt*"). However, he denied that there had been anything within it which caused him to purchase the shares [B307];
- 3.2.1.2 The Respondent's motivation for purchasing the shares was stated to have been a demonstration of a 'vote of confidence' in the regeneration scheme and IQE's involvement in it. That was the reason given at interview [B303], albeit that he had also accepted that he had hoped to benefit financially. It was the reason repeated more recently in his email of 4 May 2021 [E452-3];
- 3.2.1.3 The Tribunal noted the Respondent's experience and was particularly struck by the proximity of the dates of the meeting and the share purchase, 8 and 22 October 2018 respectively. The simple message in the GVA letter was clear; that IQE's share price was likely to have seen an increase following an earlier than predicted achievement of profitability. The Respondent could have purchased shares at any point before 22 October to show a 'vote of confidence' in IQE, but only chose to do so once in receipt of that prediction;
- 3.2.1.4 The Tribunal considered that it was also noteworthy that, within his self-referral, the Respondent had appreciated that the purchase of the shares had been unwise, albeit because he considered that he was conflicted in future discussions regarding IQE, rather than because he ought not to have benefited from the contents of the confidential information that was seen.
- 3.2.1.5 Taking all of those matters into account, the Tribunal concluded that the Respondent had probably sought to benefit from the confidential information that he received in connection with the meeting of 8 October 2018 when he bought the shares.
- 3.2.2 Whether the information contained within '*Confidential Appendix 1*' was publicly available in any event and, if so, at what time;

- 3.2.2.1 There was some doubt as to what information had been made public in connection with the meeting of 8 October 2018.
- 3.2.2.2 Paragraph 1 of the minutes of the meeting suggested that there had been some technical difficulties associated with the dissemination of paperwork before the meeting [B190], but the Ombudsman's letter of 21 May 2021 made it clear that the Agenda and the report itself *had "been available for public inspection"* [E461]. The minutes made it clear, however, that certain appendices to the report were *not* published, which appeared to include the GVA report [B191]. That made sense to us given the price sensitive nature of the predictions within it.
- 3.2.2.3 The Respondent alleged that he had no advantage over anybody else when he had decided to buy the shares [B310]. He relied upon the fact that the *"information was in the public domain"* [B308] since there *"was in a press release anyway"* [B309]. In his more recent email of 4 May 2021, he stated that *"the decision to grant a loan to IQE was fully reported in the local media in 2017 and in the financial press"* and that he made the purchase a year later when his *"knowledge of the Company was out of date"* [E452]. The press report from 14 July 2017 undoubtedly covered IQE's initial involvement as the Respondent had claimed on 4 May 2021, but what it did *not* cover and/or make public was the change in the productivity projections, anticipated profitability and the likely effect on IQE's share price in 2018 [B341-3]. The Respondent pointed to no other source of such information which *he* had had been aware of before the shares were purchased.
- 3.2.2.4 Having considered all of that evidence, the Tribunal concluded that, although some information about productivity and potential profitability was made publicly available within the report to the meeting of 8 October 2018 (e.g. [B194]), the opinion in respect of its share price was *not* part of that information [B325] (see paragraph 3.1.6 above). Further, the Claimant's suggestion that that information had been made available in a press report in 2017 was not correct. The report contained considerably greater up-to-date detail and, in the case of the confidential appendices, information which was potentially price sensitive and valuable to an investor.
- 3.2.3 Whether the Respondent sought to influence any decision in which he had a prejudicial interest;
- 3.2.3.1 The Respondent was only present at one meeting between the date of his purchase of the shares and subsequent

meetings when he declared an interest, the meeting of 18 February 2019;

3.2.3.2 The subject for discussion on 18 February was not IQE itself and/or factors which may have affected its profitability or share price, but the Welsh Audit Office report into the arrangements for the CCR City Deal [B256]. There was nothing within the minutes or other evidence which suggested that the Respondent had sought to influence any decision in which he had a prejudicial interest. The meeting simply noted the contents of the report and the 'lessons' which were to have been learnt from it. Although the Tribunal did not have a copy of the Welsh Audit Office report, there was nothing to suggest that the findings may have either undermined or improved IQE's position.

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

4.1 The Code of Conduct

4.1.1 The relevant parts of the Code of Conduct were as follows;

Paragraph 6 (1)(a);

"You must-

(a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;"

Paragraph 7 (a);

"You must not-

(a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on all secure for yourself.. an advantage..."

Paragraph 11 (1);

"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 is apparent."

Paragraph 14 (1)(a);

"Subject to subparagraphs (2), (2A), (3) and (4), 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 business is being held.."

4.2 The Respondent's Submissions

- 4.2.1 The Respondent's position in respect of the breaches alleged under the Code was as follows;
- 4.2.1.1 Paragraph 6 (1)(a);
When interviewed, the Respondent stated that he considered that he had "*fully complied*" with that paragraph of the Code [B311].
- 4.2.1.2 Paragraph 7 (a);
In the Respondent's letter of self-referral, he went some way to admitting a breach of paragraph 7 (a). He stated that, "*with the benefit of hindsight*", he saw that the purchase of the shares prevented him from becoming involved in any future CCR decisions involving IQE [B34]. When subsequently interviewed, however, he stated that did not think that a lay person would have regarded his actions as having been in breach of that paragraph [B310].
- 4.2.1.3 Paragraph 11 (1);
In his letter of self-referral, the Respondent fully accepted that he "*should have notified the council's Monitoring Officer of the disclosure of the IQE interest at the meeting of CCR in April 2019*" [B34], but that was in relation to a potential breach of paragraph 11 (4). He did not address a potential breach of paragraph 11 (1).
- 4.2.1.4 Paragraph 14 (1)(a);
When interviewed, he '*did not think*' that he had breached that paragraph, albeit that he accepted that he held a prejudicial interest as stated above [B301].

4.3 The Ombudsman's Report

- 4.3.1 It was contended that;
- 4.3.1.1 Paragraphs 6 (1)(a) and 7 (a);
The Ombudsman considered that the facts were '*suggestive*' of breaches of both paragraphs of the Code. The Ombudsman believed that the nature of the confidential information which he had access to had led him to buy the shares in IQE. That information contained indications as to the likely value of the shares and he considered that the decision to purchase after sight of the commercially sensitive information demonstrated "*extremely poor judgment on his behalf*" [B26-7].
- 4.3.1.2 Paragraph 11 (1);

The Ombudsman appeared to consider that the Respondent had a personal interest as a result of the application of the wording of paragraph 10 (2)(a)(viii) of the Code; “*any body to which you have been elected, appointed or nominated by your authority*” [B13]. It was the Ombudsman’s case that the Respondent failed to declare that interest at the meeting of 29 April 2018.

- 4.3.1.3 Paragraph 14 (1)(a);
The Ombudsman’s view was that the Respondent had a prejudicial interest which ought to have led him to withdraw from the meeting on 18 February 2019 (paragraph 50 [B28]), a view shared by the Monitoring Officer ([B114] and paragraph 7 [B273]).

4.4 Case Tribunal’s Decision

- 4.4.1 On the basis of the findings of fact, the Case Tribunal unanimously found that there were failures to comply with the Code as follows:

- 4.4.1.1 Paragraph 6 (1)(a);
The Ombudsman’s Guidance in relation to this paragraph of the Code reminded members that their actions were subject to greater scrutiny than those of ordinary members of the public [B324].

The Tribunal considered that the Respondent’s breach of paragraph 7 of the Code (below) was conduct which brought his Authority into disrepute and, in particular, his office as leader.

- 4.4.1.2 Paragraph 7 (a);
The Ombudsman’s Guidance referred to the need for members to be mindful of the fact that the paragraph within the Code applied at all times, not just when carrying out duties as a member [B326].

Having concluded that the Respondent had used his capacity to attempt to secure a pecuniary advantage for himself when he bought the shares in IQE relying on the confidential information referred to within paragraph 3.2.2, the Tribunal concluded that he had committed a breach of paragraph 7 (a).

- 4.4.1.3 Paragraph 11 (1);
The Tribunal had some difficulty with this allegation because of the wording of paragraph 10 of the Code.

Paragraph 10 (2)(iv) defined a personal interest to include an interest which related to a corporate body which had a

place of business or land in the authority's area *and* in which the interest exceeded the value of £25,000. The Respondent did not meet each of those conjunctive tests in relation to his shareholding in IQE. Paragraph 10 (2)(a)(ix)(bb) related to companies, societies or other bodies "*directed to charitable purposes.*" We could not see that either of those sub-paragraphs or any other within paragraph 10 (2)(a) of the Code clearly defined the Respondent's shareholding as a personal interest.

Paragraph 10 (2)(c) was more generic but it extended the definition of personal interests to include something upon which an authority's decision might have affected a member's financial position (sub-paragraph (i)). The Tribunal considered the Respondent's share interest was likely to have been covered by paragraph 10 (2)(c)(i) because any decision in relation to IQE could have affected his financial position as a shareholder.

The Tribunal did not see the relevance of paragraph 10 (2)(a)(viii) which had been raised by the Ombudsman [B13].

The next question to address was whether the Respondent had attended a meeting at which "*that business [was] considered*".

The Respondent considered that it was not; it was only the 'process' or due diligence 'system' by which the investment had been made which was considered on 18 February 2019 (see the interview [B291] and his recent email of 4 May 2021 [E453]). The Tribunal concluded, however, that the Welsh Audit Office's review of CCR's investments clearly would have encompassed an examination of the £38m grant to IQE. In its broadest sense, IQE was either directly or indirectly 'considered' at the meeting.

- 4.4.1.4 Paragraph 14 (1)(a);
The Tribunal considered that the Respondent held a prejudicial interest paragraph 12 (1) of the Code. He accepted that that was the case, as did the Monitoring Officer. He did not withdraw from the room on 18 February 2019 when item 11 was discussed and was in breach of paragraph 14 (1) of the Code as a result.

5. SUBMISSIONS ON ACTION TO BE TAKEN

5.1 The Respondent's Submissions

- 5.1.1 The Respondent had made no submissions which were directly related to mitigation, although comments within his interview and his email of 4 May 2021 contained some relevant points which we considered [E452-3].

5.2 The Ombudsman's submissions

- 5.2.1 The Ombudsman made submissions by a letter dated 21 May 2021 [E460-2].

5.3 Case Tribunal's Decision

- 5.2.1 The Tribunal considered all of the facts of the case, the Presidential Sanctions Guidance and the parties' submissions. It considered the following points to have been of particular relevance in mitigation;
- 5.2.1.1 The fact that there was no record of the Respondent having committed any previous breach of the Code of Conduct;
 - 5.2.1.2 The fact that he did seek to register an interest in January 2019, but failed to do so as a result of the Monitoring Officer's advice;
 - 5.2.1.3 His acceptance that his purchase of IQE shares led him to hold personal and prejudicial interests;
 - 5.2.1.4 He did not seek to influence any decision concerning IQE that was taken at the meeting on 18 February 2019;
 - 5.2.1.5 He then left the meetings on 29 April and 10 June 2019;
 - 5.2.1.6 He then also resigned as leader, referred himself to the Ombudsman and accepted further training.
- 5.2.2 The following aggravating features were relevant;
- 5.2.2.1 The Respondent was an experienced council member and, as leader, had an influential position and was expected to have set the standards of conduct for the Council;
 - 5.2.2.2 He had used confidential, price sensitive information to attempt to secure a personal advantage on the purchase of the IQE shares;
 - 5.2.2.3 There was a significant gap between his declaration of interest at the meeting on 29 April and the amendment of his register of interests on 3 June 2019, the latter having been prompted by the Deputy Monitoring Officer, a further potential breach of paragraph 11 (4) of the Code;
 - 5.2.2.4 Through the interview process, he had shown no real insight into his wrongdoing and/or acceptance of guilt;
 - 5.2.2.5 In the latter stages of the process leading to this decision, he had failed to engage with the Adjudication Panel.

5.2.3 The Case Tribunal unanimously concluded decision that the Respondent ought to have been suspended from acting as a member of the authority as follows;

5.2.3.1 In respect of his breaches of paragraphs 6 and 7 of the Code, a period of **five months**;

5.2.3.2 In respect of his breaches of paragraphs 11 and 14 of the code, a period of **two months concurrently**.

The Tribunal considered that the breach of paragraph 7 was the more serious matter, particularly since it gave rise to a breach of paragraph 6. The suspension was concurrent because the Tribunal considered that the breaches of paragraphs 11 and 14 effectively arose from the same facts.

5.2.4 The Authority and its Standards Committee are notified accordingly.

5.2.5 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 and its standards committee;

6.1.1 That the Monitoring Officer re-emphasises the requirement for members to register interests as/when they arise and that the duty does not arise annually.



Signed.....
John Livesey
Chairperson of the Case Tribunal

Date...30 June 2021...

Dr G Jones
Panel Member

Mrs S McRobie
Panel Member

NOTICE OF DECISION

TRIBUNAL REFERENCE NUMBER: [APW/002/2021/022/AT](#)

**APPEAL AGAINST STANDARDS COMMITTEE DETERMINATION IN
RELATION TO AN ALLEGED BREACH OF THE CODE OF CONDUCT**

APPELLANT: Councillor Richard Mainon

RELEVANT AUTHORITY(IES): Denbighshire County Council

1. An Appeal Tribunal convened by the President of the Adjudication Panel for Wales has considered an appeal by Councillor Richard Mainon against the decision of Denbighshire County Council's Standards Committee made on 11th June 2021 that he had breached Denbighshire County Council's Code of Conduct and should be suspended from being a member of Denbighshire County Council for a period of two months.

2. Denbighshire County Council Members' Code of Conduct.

a. Paragraph 2(d) of the code provides that members must observe the code of conduct at all times and in any capacity, in respect of conduct identified in paragraphs 6(1)(a) and 7.

b. Paragraph 4(c) of the code provides that members must not use bullying behaviour or harass any person.

c. Paragraph 6(1)(a) of the code provides that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

d. Paragraph 7(a) of the code provides that members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves or any other person, an advantage or create or avoid for themselves, or for any other person, a disadvantage.

3. The Standards Committee found the following facts.

a. On Saturday 8th December 2018, Mrs Sandie Grieve had a heated altercation with Ms Jayne Davies outside a local mini supermarket. Ms Davies is a constituent of the Appellant.

- b. Ms Davies phoned the local mini supermarket that evening to ask about CCTV footage of the car park and was advised the CCTV covered the car park, but it had no sound.
- c. On Monday 10th December 2018, Ms Davies established that Mrs Grieve worked for Social Care Wales (SCW) and asked Councillor Mainon for assistance with pursuing a complaint about Mrs Grieve to her employer. Councillor Mainon agreed to handle the matter for Ms Davies.
- d. On Tuesday 11th December 2018, Councillor Mainon conducted an online search for Mrs Grieve's place of work and determined an address for SCW's local office.
- e. On 11th December 2018, Councillor Mainon attended SCW's local office to determine if it was Mrs Grieve's place of work and to speak to her.
- f. On 11th December 2018, Councillor Mainon gained access to Mrs Grieve's workplace via a secure door entry. Mrs Grieve was not in the office at the time and Councillor Mainon spoke separately to three colleagues (an office colleague, her line manager and the organisation's Complaint Officer) about the altercation and shared details with them about the incident and Mrs Grieve's conduct. Councillor Mainon spoke to the office colleague in person but spoke to the line manager and Complaints Officer by telephone.
- g. On 15th December 2018 Councillor Mainon visited the local mini supermarket to ask whether the incident between Mrs Grieve and Ms Davies was recorded on CCTV.
- h. On 21st December 2018 Councillor Mainon visited the local mini supermarket and obtained information on what the CCTV footage of the incident had shown.
- i. On 21st December 2018 Councillor Mainon sent a complaint on Ms Davies' behalf to SCW about Mrs Grieve and her involvement in the altercation.
- j. SCW notified Mrs Grieve of the matter on 10th January 2019, which was subsequently dealt with according to the organisation's policy. SCW determined it was a private matter and no further action was taken.
- k. Aside from submitting that it was Ms Davies that had identified Mrs Grieve's employer, Councillor Mainon did not dispute this summary of the relevant facts.

4. The findings of the Standards Committee.

- a. The Committee was satisfied that Councillor Mainon gave the impression of acting in his capacity as a Councillor, thereby engaging paragraph 2 (d) of the Code of Conduct.
- b. The Committee found that Councillor Mainon had breached paragraph 4(c) of the Code in that his conduct in visiting Mrs Grieve's place of work and speaking to her colleagues in her absence could be considered to be bullying and harassing behaviour. The Committee had, in reaching this decision, considered the written evidence of Mrs Grieve and submissions to the effect

that she had genuinely felt stressed, vulnerable, upset and embarrassed. The Committee also considered the information provided by Councillor Mainon to the investigating officer and his submissions. The Committee accepted that Councillor Mainon had not intended to cause upset to Mrs Grieve and that he had no malicious intent when he attended her place of work. The Committee accepted that his intention was to assist Ms Davies and to avoid a damaging social media dispute in his community. The Committee did however conclude that Mrs Grieve was entitled to perceive Councillor Mainon's actions as bullying and harassing and that this conduct could reasonably be regarded as such.

c. The Committee concluded that Councillor Mainon had breached paragraph 6(1) (a) of the Code of Conduct. Councillor Mainon had given the impression to Mrs Grieve's colleagues that he was acting as a councillor in pursuit of Ms Davies' complaint. In doing so, and by visiting Mrs Grieve's place of work and speaking to her colleagues about the incident there was potential damage to the Council's reputation particularly as Councillor Mainon appeared to have accepted Ms Davies' version of events and had not sought Mrs Grieve's version of events.

d. The Committee concluded that Councillor Mainon's conduct amounted to a breach of paragraph 7(a) of the Code of Conduct. The Committee took into account Mrs Grieve's view that Councillor Mainon's actions were an effort to get her investigated and discredit her professionally. The Committee accepted that Councillor Mainon had not considered his approach to the Complainant's employer to be menacing and that his intent had been to seek to assist Ms Davies to pursue a complaint. However, the Committee concluded that in giving the impression that he was acting as a councillor in bringing to the attention of Mrs Grieve's employer a private incident, without demonstrating balance or fairness towards both parties, Councillor Mainon had attempted to use his position to cause Mrs Grieve a disadvantage.

5. The President of the Adjudication Panel for Wales gave limited permission to appeal on the following grounds. At paragraphs 9(c) and 9(d) of her decision dated 28th July 2021: -

9c. The Appellant submits that the Standards Committee did not define "bullying" or "harassment" and failed to identify a course of conduct in relation to harassment.

The decision of the Standards Committee...shows that the Committee was taken to the definition of bullying and harassment within the Ombudsman's guidance; it accurately summarises that relevant factors when dealing with allegations of bullying include the perception of the victim and the intention of the Appellant. I note that the report pack before the Standards Committee included excerpts of the Ombudsman's guidance explaining both bullying and harassment.

*The decision of the Standards Committee did not separate bullying from harassment; the two are not the same thing. The decision does not set how the Committee concluded that there was a course of conduct/repeated behaviour which constituted harassment. While the Notice sets out the activities of the Appellant towards the Complainant, which could be seen as more than one act and repeated behaviour, the Committee does not set out its conclusions in that regard to its decision; while it is likely that the Appellant's case here is not strong, I cannot say it has no reasonable prospect of success. However, the decision does set out how the Committee concluded that the Appellant's conduct could be reasonably perceived subjectively and objectively as bullying. **I do not consider this ground of appeal to have a reasonable prospect of success in respect of bullying and direct it not to be considered by the Appeal Tribunal. I do consider this ground of appeal to have a reasonable prospect of success in respect of harassment and it therefore will be considered by an Appeal Tribunal in due course.***

*9d. The Appellant goes on to dispute the Standards Committee's finding that he undertook a course of conduct which equated to harassment. For the relevant reasons given in sub paragraph c above, **I do consider this ground of appeal to have a reasonable prospect of success and it therefore will be considered by an Appeal Tribunal in due course.***

6. The President gave permission to appeal the sanction imposed in the following terms and with the following caveat.

*9k. I cannot say in all the circumstances that there is no reasonable prospect of success...as it is generally always arguable that a sanction imposed was too harsh or too lenient. This is despite the Appellant at the hearing, according to the Notice of Decision, saying that he would accept its judgment, and the evidence within the Notice of Decision that the Standards Committee considered the Sanctions Guidance. I remind the parties that if the Appeal Tribunal chooses to recommend that the sanction be reconsidered by the standards committee, the tribunal has the ability to recommend a reduction or increase in the period of suspension. **It therefore will be considered by an Appeal Tribunal in due course.***

7. A hearing was held by the Appeal Tribunal at 10am on 29th October 2021 via Cloud Video Platform. The hearing was open to the public. Councillor Mainon was represented by Mr Owain James. The Public Service Ombudsman for Wales was represented by Ms Katrin Shaw.

8. The Appeal Tribunal found by unanimous decision that between 11th December 2018 and 21st December 2018, Councillor Mainon harassed Mrs Sandie Grieve.

9. The Appeal Tribunal found by unanimous decision that thereby Councillor Mainon breached paragraph 4(c) of the Code of Conduct by harassing Mrs Sandie Grieve.

10. The Appeal Tribunal accordingly decided by unanimous decision to endorse the decision of Denbighshire County Council's Standards Committee that Councillor Mainon had breached the authority's Code of Conduct.

11. The Appeal Tribunal further determined to endorse the decision of the Standards Committee that Councillor Mainon should be suspended from being a member of Denbighshire County Council for a period of two months.

12. Denbighshire County Council and its Standards Committee are notified accordingly. The full decision report will be published on the APW website in due course.

Signed: Tom Mitchell

Date: 29th October 2021

Tom Mitchell
Chairperson of the Appeal Tribunal

Siân McRobie
Panel Member

Hywel Eifion Jones
Panel Member

This page is intentionally left blank



RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 NOVEMBER 2021

PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS AGAINST MEMBERS – 1ST APRIL 2021 – 31ST OCTOBER 2021

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

- 1.1 To provide Members with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1st April 2021 – 31st October 2021.

2. RECOMMENDATIONS

- 2.1 To consider the contents of the report and provide any comments/feedback on the complaints received by the Ombudsman during the period 1st April 2021 – 31st October 2021.

3. BACKGROUND AND DETAILS OF COMPLAINTS

- 3.1 In determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test. At the first stage, he will aim to establish whether there is direct evidence that a breach of the Code has occurred. At the second stage the Ombudsman considers whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. This involves the consideration of a number of public interest factors such as: whether the member has deliberately sought a personal gain at the public's expense for themselves or others, misused a position of trust, whether an investigation is required to maintain public confidence in elected members and whether an investigation is proportionate in the circumstances.
- 3.2 Members will note below the summary of anonymised complaints made against Members and submitted to the Ombudsman for the period 1st April 2021 – 31st October 2021:

| Date Complaint Received by the Ombudsman | Body & Cllr | Nature of Complaint | Ombudsman Investigation Yes/No |
|------------------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 19/4/21 | Taffs Well & Nantgarw Community Council (Community Cllr) | <p>Mr K's complaint against Cllr H related to an ongoing investigation that was at the time being conducted by the Ombudsman. Mr K had come into possession of evidence that was being used as part of that ongoing investigation which was provided to the original recipient in confidence.</p> <p>As the complaint (and evidence supplied by the complainant) was connected to an ongoing investigation it was not appropriate for the Ombudsman to consider a complaint about that at this stage.</p> <p>If at the conclusion of the investigation process there were any outstanding matters which have not been addressed it was open to the complainant to raise a fresh complaint.</p> | No |
| 16/6/21 | Llantwit Fardre Community Council (Community Councillor) | <p>Cllr C complained Cllr A failed to declare an interest at a meeting, where as a statutory consultee, the Council was asked for its views towards a recently registered planning application in relation to land owned by Cllr A.</p> <p>Cllr A was said to have denied having any interest when it was raised with them, as although it was on land they owned they were not the applicant. Cllr C explained that in their opinion Councillor A benefited from the success and rental fees relating to their land, and as such had a prejudicial interest which they should have declared.</p> <p>This was also highlighted in Cllr A's own declaration of interests, in that they had declared a "beneficial interest in a class of securities that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of a body" related to the planning application.</p> <p>It was stated that Cllr A may have breached the following paragraphs of the Code:</p> <ul style="list-style-type: none"> • 10(2)(a)(iv) [Members] must regard [themselves] as having a personal interest in any business of [their] authority if any corporate body which has a place of business or land in [their] authority's area, and in which [they] have a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body. • 10(2)(c)(i) [Members] must regard [themselves] as having a personal interest in any business of [their] authority if a decision upon it might reasonably be regarded as affecting their well-being or financial position. • 11(1) Where [members] have a personal interest in any business of [their] authority and [they] attend a meeting at which that business is considered, [they] | No |

| | | | |
|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| | | <p>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.</p> <ul style="list-style-type: none">• 14(1)(a) - Where [members] have a prejudicial interest in any business of [their] authority [they] must, unless [they] have obtained dispensation from [their] authority's Standards Committee withdraw from the room, chamber or place where a meeting considering the business is being held whenever it becomes apparent that that business is being considered at that meeting. <p>The Ombudsman's guidance on the Code of Conduct explains that personal interests relate to issues where a member or a close personal associate may have some link to a matter under discussion. In the first instance members are required to decide if they have a personal interest and whether they should disclose it, and if so, to declare it as soon as it becomes apparent. Members with a personal interest can remain in a meeting and speak and vote on a relevant matter unless the personal interest is also prejudicial. These interests become prejudicial where an informed independent observer could conclude that the interest would prejudice their judgement of the public interest or influence the members vote or decision.</p> <p>It is noted that Cllr A had previously declared a personal interest on the Register of Members' Interests in respect of the company which operates on their land. The Community Council was being consulted on this application. It was noted that the Council was not the decision-making body as such regarding the planning application, and the Ombudsman found no evidence that Cllr A had taken part in any decision at that meeting concerning the planning application, or voted on anything in respect of decisions concerning the planning application.</p> <p>The Ombudsman considered that as the owner and/or landlord of the land affected by the application Cllr A had a personal interest which could also be deemed prejudicial and they should potentially have declared this. However, they did not consider it would be proportionate or in the public interest to investigate Cllr A's actions at that meeting in this circumstance. Whilst their conduct may suggest a technical breach of the Code, it appeared to the Ombudsman that even if the breach were to be found it is unlikely, given the reasons outlined, that a sanction would be imposed. Cllr A was advised however that they should be mindful of their obligations under the Code to disclose their interests orally and to consider whether they need to withdraw when matters relating to the planning application are discussed.</p> | |
|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

| | | | |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| 5/7/21 | Ynysybwll Community Council (Community Councillor) | <p>Cllr E complained Cllr P failed to appropriately chair a meeting of the Community Council and accused Cllr E of misleading the Community Council during a previous meeting. Also that Cllr P ignored that a member arrived late to a meeting and allowed them to speak and vote on the matter, despite not being present at the start of the discussion. Cllr P also failed to invite Cllr E back to the meeting after the discussion in which Cllr E had a personal interest had finished.</p> <p>The Ombudsman will not investigate a complaint unless there is reasonably strong evidence to suggest that the member concerned has breached the Code of Conduct. It was the Ombudsman's understanding that Cllr E had left the meeting when the events complained about happened and therefore they did not witness the events. They had not provided any additional evidence in support of their complaint. In the absence of any evidence the complaint did not meet the first stage of the Ombudsman's two-stage test and therefore would not be investigated.</p> <p>In any event the Ombudsman was not persuaded that the matters which were alleged amounted to a breach of the Code of Conduct. This is because it appeared that the complaint related to how a meeting was chaired and conducted rather than Cllr P performing functions as a councillor. It is for the Chair to apply the rules of debate and procedure (standing orders) as appropriate to prevent disorderly conduct at council meetings.</p> | No |
| 13/7/21 | <p>Community Council (Community Councillor)</p> <p><i>Community Council not named as complaint linked to ongoing investigation</i></p> | <p>Cllr V complained Cllr T failed to obtain planning permission before starting to develop a commercial business on land. They also complained about an email received from Cllr T which they believed to be bullying.</p> <p>In relation to the complaint that Cllr T failed to obtain planning permission, it appeared to the Ombudsman that the breach of the Code which was alleged was not sufficiently serious to warrant investigation. Cllr T had intended to place containers on the land and had started to clear the relevant site and level the ground before applying for planning permission. It was alleged Cllr T only sought planning permission after they were prompted to do so by an RCTCBC officer. From the evidence provided in support of the complaint, it was not clear whether Cllr T was prompted to obtain planning permission from an RCTCBC Officer or whether they sought planning permission of their own accord. In any event, given that Cllr T did apply for planning permission prior to placing the shipping containers on the land the Ombudsman was not persuaded that the information he considered was suggestive of a breach of the Code and did not consider it in the public interest to investigate that element of the complaint.</p> <p>In relation to the complaint about the content of Cllr T's email as the Ombudsman was already in the process of investigating a complaint about bullying behaviour by Cllr T the complaint would be used as witness evidence</p> | No (linked to ongoing investigation) |

| | | | |
|---------|------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| | | in that investigation. | |
| 13/7/21 | Community Council (Community Councillor) <i>Community Council not named as complaint linked to ongoing investigation</i> | Cllr E complained about comments made by Cllr T at a Council meeting. As the Ombudsman was already investigating an identical complaint it would inform the complainant of the outcome of that investigation in due course. | No (linked to ongoing investigation) |
| 21/7/21 | Community Council (Community Councillor) <i>Community Council not named as complaint linked to ongoing investigation</i> | Mrs B complained that Cllr T had used bullying or intimidating behaviour towards them and shown respect. The Ombudsman is currently investigating this complaint. The complaint is being investigated on the basis that there may have been a failure to comply with the following paragraphs of the Code: <ul style="list-style-type: none"> • 4(b) – you must show respect and consideration for others. • 4(c) – you must not use bullying behaviour or harass any person. • 4(d) – you must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority. • 6(1)(a) – you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. • 11 – disclosure of personal interests. • 14 – disclosure of prejudicial interests. | Yes (ongoing) |
| 28/7/21 | Community Council (Community Councillor) <i>Community Council not named as linked to ongoing investigation</i> | Mr L complained about a failure by Cllr T to show respect and consideration towards others and that their behaviour was bullying. They also alleged that Cllr T had attempted to influence members of the Community Council to support a planning application. The Ombudsman was already in the process of investigating these matters. It was confirmed the complaint would be used as witness evidence in that investigation. | No (linked to ongoing investigation) |
| 19/8/21 | Ynysybwl Community Council (Community Councillor) | Miss D complained Cllr W posted a video on Facebook. It was alleged Cllr W posted the video without their consent and that the video accused them of leaving dog mess in a public lane, which was not true. Miss D said that they found Cllr W's actions to be detrimental to their character and considered that their actions were intimidating and constituted bullying. In addition they alleged that when they contacted Cllr W on Facebook about the video their response was rude and unprofessional. They said that Cllr W's refusal to remove the video was in breach of GDPR regulations. The Code of Conduct only applies when a councillor is acting as a private individual in very specific circumstances, which did not appear to apply in this case. The Ombudsman had not seen any evidence that | No |

| | | | |
|---------|----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| | | <p>Cllr W was acting as in their role as a councillor at the time of the conduct complained about. The Code of Conduct usually only applies when a member of a council is performing functions as a councillor or seeking in some way to rely upon their status as a councillor.</p> <p>Most of the provisions of the Code (including the requirement to show respect and consideration to others) do not apply to comments which councillors make in their personal capacity. The Ombudsman was therefore only able to consider that when making the comments, Cllr W may have brought their Council or their office as a councillor into disrepute. The Ombudsman had not seen any evidence that Cllr W named the complainant in the video. Therefore the Ombudsman stated that whilst posting the video on Facebook may be deemed by Miss D to be discourteous they did not consider that the matters complained about were sufficiently serious to warrant investigation. It was also noted that the video had limited reach and Miss D was able to share their version of events, therefore, they were not persuaded that even if the alleged breach were to be proven, an investigation would be in the public interest.</p> <p>In addition any concerns regarding a breach of GDPR would be more appropriately raised with the Information Commissioner's Office.</p> | |
| 21/9/21 | Llantwit Fardre Community Council (Community Council) | <p>Cllr G complained Cllr E, at the Management Committee of the Council repeatedly called them a liar on a matter that was not the business of the Committee.</p> <p>It was stated Cllr E may have breached the following paragraphs of the Code of Conduct ("the Code"):</p> <ul style="list-style-type: none"> • 4(b) – [Members] must show respect and consideration for others • 4(c) – [Members] must not use bullying behaviour or harass any person. <p>The Ombudsman stated this was a complaint suitable for resolution under local procedures. The local resolution procedure would also provide Cllr G the opportunity to seek the withdrawal of the alleged comments.</p> | No (referred back to Community Council for Local Resolution) |
| 27/9/21 | <p>Community Council (Community Councillor)</p> <p><i>Community Council not named as complaint linked to ongoing investigation</i></p> | <p>Miss M complained that Cllr F had used bullying or intimidating behaviour towards them. The Ombudsman is currently investigating this complaint. The complaint is being investigated on the basis that there may have been a failure to comply with the following paragraphs of the Code:</p> <ul style="list-style-type: none"> • 4(c) – you must not use bullying behaviour or harass any person. • 6(1)(a) – you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute. | Yes (ongoing) |

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 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

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 NOVEMBER 2021

REPORT OF THE MONITORING OFFICER

Background Papers: Freestanding matter

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



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2021 - 2022

STANDARDS COMMITTEE

19 NOVEMBER 2021

APPLICATION FOR DISPENSATION – COUNTY BOROUGH COUNCILLOR P. JARMAN

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To enable the Committee to decide whether to grant a dispensation to County Borough Councillor Pauline Jarman to speak and vote on all matters for the duration and adoption of the 2022-23 Budget process in her capacity as Leader of the Opposition.

2. RECOMMENDATION

2.1 To consider granting County Borough Councillor Pauline Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2022-23 Budget process in her capacity as Leader of the Opposition.

3. BACKGROUND

3.1 Paragraph 14 of the Code of Conduct sets out the procedures to be followed regarding participation in meetings when a Member has declared a personal and prejudicial interest.

3.2 However the participation by a Member in any business which is prohibited by Paragraph 14 is not a failure to comply with the Code if the Member has acted in accordance with a dispensation from the prohibition granted by the Standards Committee in accordance with regulations.

3.3 The relevant regulations are the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001. These regulations set out the grounds on which dispensations may be granted.

- 3.4 County Borough Councillor Pauline Jarman's son works in the Streetcare Department and lives with her at her home address. Councillor Jarman therefore seeks a dispensation to speak and vote on all services affected by the Budget. In her application for dispensation Councillor Jarman states that by virtue of being Leader of an Opposition Group (Plaid Cymru), her participation in the Budget process is justified.
- 3.5 One of the grounds for granting a dispensation is:-
- “(f) the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise.”
- 3.6 It is therefore recommended the Committee consider granting Councillor Pauline Jarman a dispensation to speak and vote on all matters for the duration and adoption of the 2022-23 Budget process in her capacity as Leader of the Opposition.

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

LIST OF BACKGROUND PAPERS

STANDARDS COMMITTEE

19 NOVEMBER 2021

BACKGROUND PAPERS

| | |
|----------------------------------------------------------------------------------|-----------------------------------------|
| APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR P.JARMAN | Officer to contact: Andy Wilkins |
|----------------------------------------------------------------------------------|-----------------------------------------|

Freestanding Matter



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2021 - 2022

STANDARDS COMMITTEE

19 NOVEMBER 2021

APPLICATION FOR DISPENSATION – COUNTY BOROUGH COUNCILLOR R. BEVAN

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To enable the Committee to decide whether to grant a dispensation to County Borough Councillor Robert 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 in the Community and Children's Services Group as the Programme Manager – Assistive Technology, with such dispensation being reviewed on an annual basis by the Standards Committee.

2. RECOMMENDATION

- 2.1 To consider granting 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.

3. BACKGROUND

- 3.1 Paragraph 14 of the Code of Conduct sets out the procedures to be followed regarding participation in meetings when a Member has declared a personal and prejudicial interest.
- 3.2 However the participation by a Member in any business which is prohibited by Paragraph 14 is not a failure to comply with the Code if the Member has acted in accordance with a dispensation from the prohibition granted by the Standards Committee in accordance with regulations.

- 3.3 The relevant regulations are the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001. These regulations set out the grounds on which dispensations may be granted.
- 3.4 County Borough Councillor Robert Bevan's daughter works in the Community & Children's Services Group as the Programme Manager – Assistive Technology. Councillor Bevan therefore seeks 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. Reference to matters 'directly affecting his daughter' in this context means matters which do not directly financially advantage or disadvantage, or give other direct benefit or dis-benefit to her.
- 3.5 Councillor Bevan acknowledges 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.
- 3.6 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.
- 3.7 Two of the grounds for granting a dispensation are:-
- “(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.”
- 3.8 It is recommended the Committee consider granting Councillor Robert Bevan a dispensation to speak and vote on all matters for 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 on an annual basis.

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

LIST OF BACKGROUND PAPERS

STANDARDS COMMITTEE

19 NOVEMBER 2021

BACKGROUND PAPERS

| | |
|---------------------------------------------------------------------------------|-----------------------------------------|
| APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR R.BEVAN | Officer to contact: Andy Wilkins |
|---------------------------------------------------------------------------------|-----------------------------------------|

Freestanding Matter

This page is intentionally left blank



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2021 - 2022

STANDARDS COMMITTEE

19 NOVEMBER 2021

APPLICATION FOR DISPENSATION – COUNTY BOROUGH COUNCILLOR M. POWELL

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To enable the Committee to decide whether 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.

2. RECOMMENDATION

- 2.1 To consider granting 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.

3. BACKGROUND

- 3.1 Paragraph 14 of the Code of Conduct sets out the procedures to be followed regarding participation in meetings when a Member has declared a personal and prejudicial interest.
- 3.2 However the participation by a Member in any business which is prohibited by Paragraph 14 is not a failure to comply with the Code if the Member has acted

in accordance with a dispensation from the prohibition granted by the Standards Committee in accordance with regulations.

- 3.3 The relevant regulations are the Standards Committee (Grant of Dispensations) (Wales) Regulations 2001 (the 'Regulations'). The Regulations set out the grounds on which dispensations may be granted.
- 3.4 County Borough Councillor Michael Powell's wife works in the Children's Services department as a Contact Worker. Councillor Powell seeks a dispensation to speak and vote on all matters relating to the Children's Services department, save for any specific matters that directly affect his wife. Reference to matters 'directly affecting his wife' in this context means matters which do not directly financially advantage or disadvantage, or give other direct benefit or dis-benefit to her. In his application Councillor Powell has stated his wife is not in a decision making position.
- 3.5 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.
- 3.6 The ground for granting a dispensation under the aforementioned regulations under which Councillor Powell has applied for his dispensation are as follows:

Ground:

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

- 3.7 It is recommended the Committee consider granting Councillor Michael Powell a dispensation to speak and vote on all matters relating to the Children's Services department, 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 on the ground that the participation of the Member in the business to which the interest relates is justified by the Member's particular role or expertise as Leader of the RCT Independents Political Group.

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

LIST OF BACKGROUND PAPERS

STANDARDS COMMITTEE

19 NOVEMBER 2021

BACKGROUND PAPERS

| | |
|----------------------------------------------------------------------------------|-----------------------------------------|
| APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR M.POWELL | Officer to contact: Andy Wilkins |
|----------------------------------------------------------------------------------|-----------------------------------------|

Freestanding Matter

This page is intentionally left blank



RHONDDA CYNON TAF

RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 NOVEMBER 2021

PUBLIC SERVICES OMBUDSMAN FOR WALES - ANNUAL REPORT AND LETTER 2020–2021

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

To provide Members with a summary of matters pertaining to standards of conduct of County, Town and Community Councillors as set out in the Public Services Ombudsman for Wales' ('PSOW') Annual Report and Annual Letter to this Council for 2020-2021.

2. RECOMMENDATION

- 2.1 That the Committee notes the matters relating to Code of Conduct Complaints reported in the Public Services Ombudsman for Wales' Annual Report and Annual Letter to this Council 2020-2021.

3. BACKGROUND

- 3.1 The PSOW has published his Annual Report for 2020-2021 ('AR') pursuant to Paragraph 14 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2005. The AR has been combined with the annual accounts for the PSOW as it was last year. The purpose of the AR is to report on the performance of the PSOW's office over the year, provide an update on developments and to deliver any key messages arising from their work carried out during the year.

- 3.2 The AR Executive Summary is attached at Appendix 1. The full report can be accessed via the following link on the PSOW website:

<https://www.ombudsman.wales/wp-content/uploads/2021/07/Annual-Report-and-Accounts-2020-21-Delivering-Justice-FINAL.pdf>

- 3.3 The PSOW also issues an Annual Letter (AL) to each Local Authority in Wales with a summary of complaints received by his office that relate specifically to that Local Authority. The AL is attached as Appendix 2 to this report.

- 3.4 The AR sets out the workload that has been dealt with by the PSOW during 2020-2021. It breaks the workload down into the number of enquiries received and the number of complaints received, and also breaks down the complaints

into those received about services (public body complaints) and those received in relation to Code of Conduct Complaints (CCCs). This report will highlight the data relating to CCCs only (issues arising from public services or the annual accounts section of the AR are beyond the scope of this report).

- 3.5 The number of CCCs increased by 47% during 2020-2021 with the PSOW receiving 535 new CCCs with 308 taken forward for investigation. The total number of complaints for the year 2018-19 was 282 and for 2019-20, 231. Of those 308 complaints 167 related to Town and Community Councils, 138 to Local Authorities, 2 to National Park authorities and 1 to a Fire Authority.
- 3.6 Whilst complaints about members of National Parks and Fire Authorities have remained low, Town and Community Council complaints have increased by 23.7% and County and County Borough Council complaints have increased by 43.8%. The PSOW has stated the latter is of particular concern. It should be noted however that there were 35 complaints made about 1 individual County Council member with several investigations ongoing in respect of those complaints.
- 3.7 Within a small number of Town and Community Councils the PSOW has stated he is still seeing complaints which appear to border on frivolity or are motivated by political rivalry or clashes of personalities rather than being true Code of Conduct issues. Where his offices receives 'tit for tat' complaints they will engage with the Council and the Monitoring Officer of the principal authority to remind its members of their obligations under the Code and their democratic responsibilities to the communities they serve.
- 3.8 As in previous years the majority of CCCs (55%) related to matters of the promotion of equality and respect; 14% related to the failure to disclose or register interests; 12% related to integrity; 4% related to accountability and openness; 5% related to failure to be objective or act with propriety; 8% related to the duty to uphold the law and 2% related to selflessness and stewardship.
- 3.9 As in previous years therefore the majority of CCCs received during 2020/2021 related to matters of 'promotion of equality and respect' (55%) and 'disclosure and registration of interests' (14%). The PSOW has noted there is an annual increase in the number of complaints where bullying behaviour is being alleged.
- 3.10 The PSOW has highlighted once again the important of Code of Conduct training to become a 'good councillor'. From his investigations he has gained an impression that many members of Town and Community Councils often do not take up training opportunities offered on the Code of Conduct. Whilst there is no statutory obligation for Members to complete training currently it is strongly advised they should do so.
- 3.11 In 2020-2021 the PSOW closed 289 cases. The most common outcome of the complaints were that they were 'closed after initial consideration'. The majority (255) were closed under this outcome. These include decisions where there is no 'prima facie' evidence of a breach of the Code and it is not in the public interest to investigate.
- 3.12 24 complaints were taken forward for investigation in 2020-21 with the PSOW again directing investigative resources towards the more serious complaints

where an investigation is required in the public interest. In 14 cases an investigation was discontinued (5 cases), no evidence of breach was found or no further action was necessary (9 cases) and there were 10 referrals (to either Standards Committees or the Adjudication Panel for Wales) – a 50% increase from 2019-2020.

- 3.13 As regards investigating complaints the Ombudsman notes the following in his report:

“All the Code of Conduct complaints received by our office are assessed against our two-stage test. We consider whether:

- a complaint is supported by direct evidence that is suggestive that a breach has taken place*
- it is in the public interest to investigate that matter.*

Public interest can be described as “something which is of serious concern and benefit to the public

During the life cycle of an investigation, we review the evidence gathered to assess whether it remains in the public interest to continue. Where it appears that investigating a matter is no longer in the public interest, we will make the decision to discontinue that investigation. Also, sometimes when we investigate we find no evidence of a breach. Finally, when an investigation is concluded, we can determine that ‘no action needs to be taken’ in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour (which may be suggestive of a breach of the Code) and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned.”

- 3.14 The above happened in 58% (14 cases) of the investigations undertaken during the period (i.e. no evidence of breach was found or investigation discontinued), a significant decrease on the previous year, where this outcome happened in 85% of cases. The PSOW has stated that whilst fewer cases are being referred to investigation, of those that are, he is finding evidence suggestive of a breach of the Code of Conduct in more cases.
- 3.15 The subjects of the Code of Conduct complaints that were closed largely mirrored the subjects of the new complaints received. The majority related to ‘disclosure and registration of interests’ and ‘promotion of equality and respect.
- 3.16 There were 6 referrals to the Standards Committees this year. At the time of writing 5 are yet to be concluded. The matter which has already been considered related to a former member of Laleston Community Council who used Council funds for personal items. The Standards Committee issued a censure, the only sanction available to it as the member had resigned. A Standards Committee also considered 2 cases which were referred to it in the previous year, relating to 2 members of Conwy Town Council who had failed to disclose an interest in business relating to a member of staff who had made a bullying complaint against them which had not been resolved at the time of the events. Both members were suspended for 1 month.

- 3.17 There were 4 referrals to the Adjudication Panel for Wales. 2 have already been considered and were previously reported to the Committee. The first concerned the conduct and behaviour of a member in relation to their failure to disclose their personal and prejudicial interests and their actions towards a member of staff. In this case the member of Merthyr Tydfil County Borough Council was suspended for 7 months. The second related to Facebook posts made by a member of Sully and Lavernock Community Council, which contained extreme and gratuitous violent references about female politicians. The member was disqualified for 15 months.
- 3.18 In 20/21 the Adjudication Panel for Wales and the Standards Committees upheld and found breaches in 100% of PSOW referrals.
- 3.19 The PSOW had stated that the increase in the number of complaints referred for further consideration in respect of potentially serious breaches of the code last year, is of concern and suggests there has been some decline in member conduct. Of the complaints referred for hearing which are yet to be determined, it is concerning that the complaints suggest disreputable conduct and that some members may have misused their positions as members.
- 3.20 Nevertheless the investigations and the outcomes of these case referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them.
- 3.21 The PSOW is currently trialling a change in process which they anticipate will reduce the time taken to decide whether a complaint should be investigated and improve overall investigation times. Where appropriate, they also want to give members the opportunity to account for their own actions, even when we they do not refer a case for hearing because it does not meet the PSOW public interest test.
- 3.22 In 2020/21 the PSOW received 36 Code of Conduct complaints that would potentially meet the statutory definition of disclosure from employees or former employees of a council. The disclosures mostly related to allegations that the members concerned had 'failed to promote equality and respect'. Eleven complaints were investigated. Investigation is continuing into 10 complaints and 1 was discontinued as the investigation was no longer in the public interest. The 2 complaints ongoing from 2019/20 were concluded. One was referred to the Standards Committee. The former Member received a censure for misusing funds. The second was referred to the Adjudication Panel for Wales. The Member was suspended for failing to declare an interest and poor behaviour towards a member of staff.

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

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

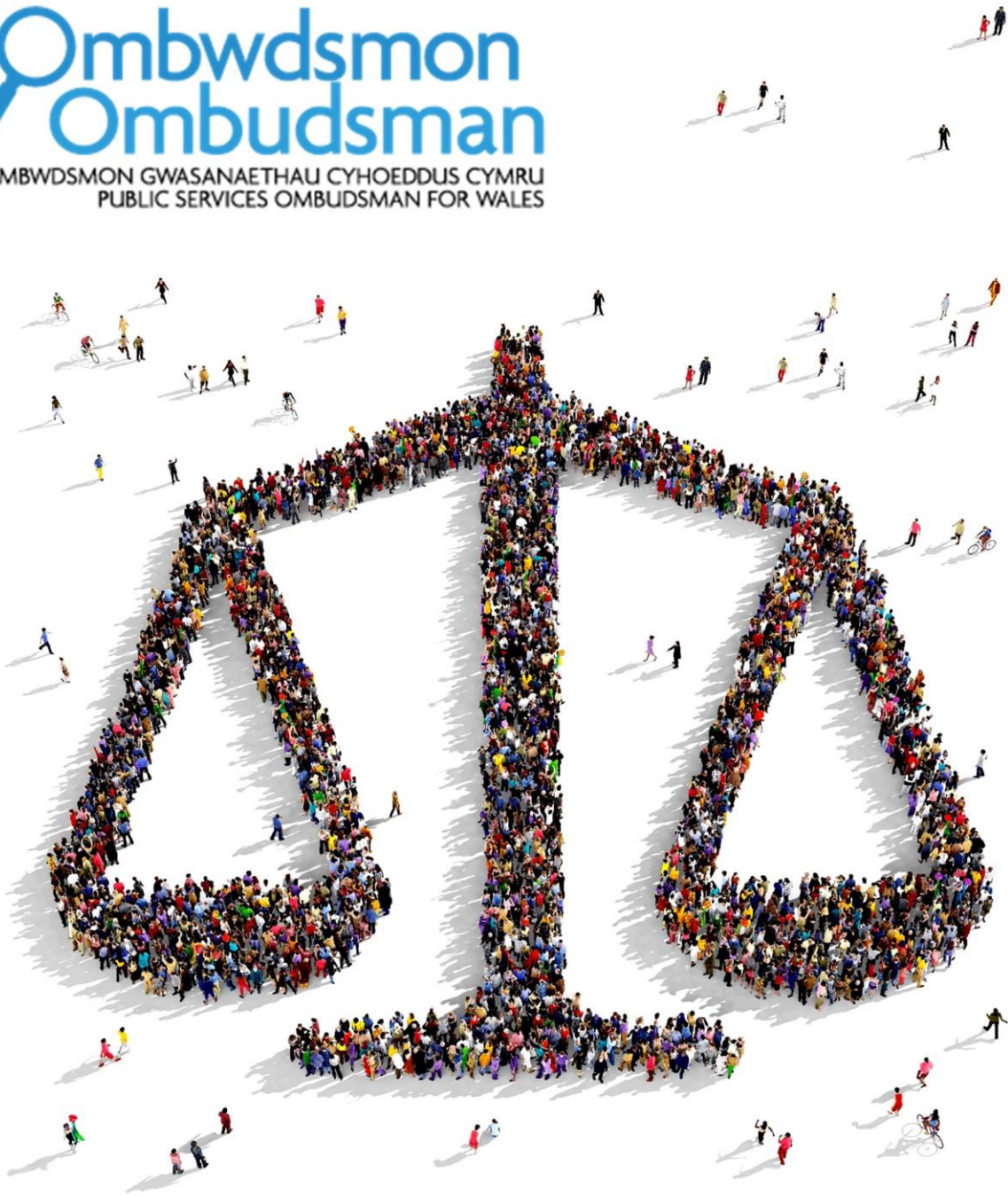
STANDARDS COMMITTEE

19 NOVEMBER 2021

REPORT OF THE MONITORING OFFICER

Background Papers: Public Services Ombudsman for Wales' Annual Report
2020-2021
Public Services Ombudsman for Wales' Annual Letter –
RCT CBC 2020-2021

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



Delivering Justice

The Public Services Ombudsman for Wales

Annual Report and Accounts

2020/21

Executive Summary

Message from the Ombudsman.

The coronavirus pandemic has presented all public bodies with new challenges, not least the massive challenges to health and care services. My thoughts are with all those servants of the public, the key workers who have not had the option of home working through this crisis.



We have maintained our service throughout, with staff enabled to work remotely. I am very grateful for our teams in facilitating and accepting change so effectively.

We saw the first substantial reduction in cases but in contrast code of conduct complaints about local elected members have increased. We have revised our Code of Conduct Guidance and were involved in training for some town councils about the Code. Complaints standards for local authorities and health boards are now in place, with training being provided to organisations that generate 95% of our complaints.

Despite all the challenges of the past year, I genuinely feel that this annual report reflects well on the office and our people, and I hope that the following year brings greater 'normality' to all our lives.

Nick Bennett

Public Services Ombudsman for Wales



About us

We have three main roles:

- handling complaints about public service providers.
- considering complaints about breaches of the Code of Conduct by elected members.
- driving systemic improvement of public services.

We are independent of all government bodies and the service we provide is free of charge.

Contact us

1 Ffordd yr Hen Gae, Pencoed, CF35 5LJ

0300 790 0203

Page 58

ask@ombudsman.wales

<https://www.ombudsman.wales/>

We have continued to deliver for those who have suffered injustice during the pandemic.



61%

of people contacting us were provided with advice or directed to other sources of help.



3,774
enquiries



2,409
complaints

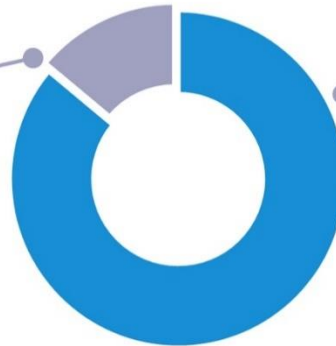
47%

more Code of Conduct complaints compared to last year.

Complaints about

14%

Code of Conduct breaches.



86%

public bodies.

We strive to be a fair independent, inclusive and responsive complaints service. We continued to deliver justice to the people of Wales by handling complaints about maladministration by public bodies and allegations of breaches the Code of Conduct by elected members.

The Covid-19 pandemic had an impact on the number of enquiries and complaints we have received and closed in 2020/21.

14%

We had 14% fewer contacts in 2020/21

16%

We received 16% less complaints about public bodies

21%

We received 21% less complaints about the NHS

11%

We received 11% less complaints about local authorities

12%

We closed 12% fewer cases in 2020/21

New complaints about public bodies

2020/21



2019/20



We developed a constructive dialogue with the public bodies we investigate to understand their position during the pandemic. This was to make sure it would work for everyone and to make sure we were maintaining a service for complainants. This dialogue has continued over the year, and we have adapted as public bodies have too.

| | | | |
|-------------------------------|-----|--|-----|
| Health | 39% | | 41% |
| Housing | 13% | | 15% |
| Complaint handling | 9% | | 9% |
| Social services | 9% | | 8% |
| Planning and building control | 7% | | 7% |
| Covid-19 | 3% | | 0% |
| Other | 20% | | 18% |

Complaints about public bodies closed

1,687

Assessments

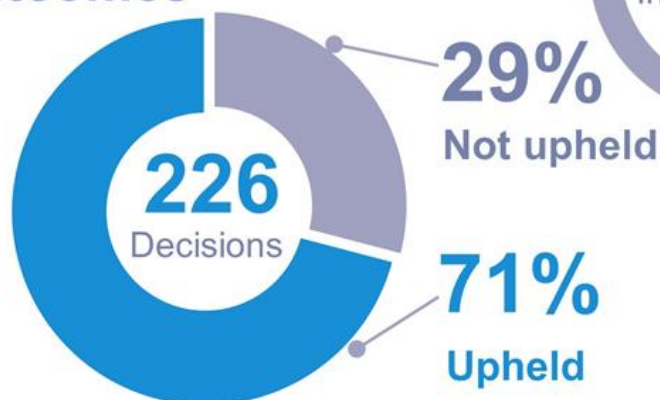
- 212 resolved early with the public body
- 346 out of our jurisdiction
- 658 unable to investigate*
- 471 were made to us prematurely

248

Investigations

Investigation outcomes

- 11 complaints were settled voluntarily.
- 11 investigations were discontinued.



*Reasons 'Unable to investigate': more than 12 months since awareness of hardship or injustice; the complainant has access to alternative legal remedy; there is no evidence of maladministration; unable to achieve the outcome sought; not proportionate; no direct hardship or injustice suffered.

New complaints about Code of Conduct breaches

2020/21



2019/20



Town and Community Council

complaints have increased by 23.7% and County and County Borough Councils complaints by 43.8%. We received 35 complaints about 1 County Council member. Several investigations are ongoing in respect of those complaints.

| | | | |
|------------------------------------------|-----|--|-----|
| Promotion of equality and respect | 55% | | 49% |
| Disclosure and registration of interests | 14% | | 17% |
| Accountability and openness | 4% | | 11% |
| Integrity | 12% | | 10% |
| Duty to uphold the law | 8% | | 7% |
| Selflessness and stewardship | 2% | | 3% |
| Objectivity and propriety | 5% | | 2% |

Closed complaints about Code of Conduct breaches

10 were withdrawn.

255 closed after initial consideration.

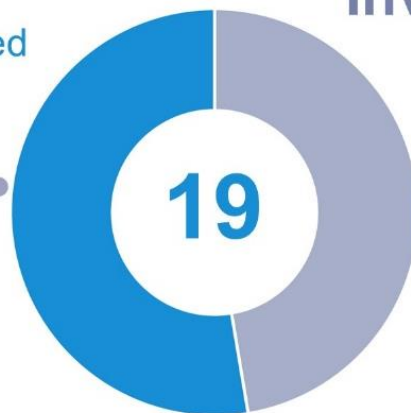


Assessments

5 investigations were discontinued

Investigations

53%
Referred



47%
No action necessary



We intervened in (upheld, settled or resolved early) 20% of complaints about public bodies, the same as last year.

We referred 3% of our code of conduct complaints to local standards committee or the Adjudication Panel for Wales, up from 2% in the previous year.

1045

recommendations issued to public bodies.

£62k

of financial redress recommended.

2

special reports issued.

20%

of our recommendations highlighted retraining or process reviews. This can lead to significant improvement in public services.

85%

compliance with recommendations due during the year.

Here is an example from our casework of the types of recommendations we make to help deliver justice:

The Ombudsman found shortcomings in Betsi Cadwaladr University Health Board's assessment, investigation and diagnosis of Mr D's brainstem stroke, until it was too late for treatment options to be considered. The investigation found that the loss of the opportunity to have potential treatment options discussed was a significant injustice.


The Ombudsman recommended that the Health Board should:


- Apologise to Mr D and Mrs D.
- Make a financial redress payment of £1,500.
- Share the report with the doctors involved in the interests of improving their clinical practice.
- Develop an action plan to address the failings identified in the report within 3 months


We also continued to share our findings through public interest reports, casebooks, thematic reports and annual letters to the bodies in our jurisdiction.

We issued:


8 public interest and special reports


Health  6

Planning  1

Social care  1

1 thematic report

"At Your Service: A Good Practice Guide" 

We published our second Equality and Human Rights Casebook 

Each year, we send letters on to health boards and local authorities concerning the complaints we have received and considered during. They provide these bodies with information to help them improve both their complaint handling and the services that they provide.



We are proactive, helping the public sector improve during challenging times.

We made large strides in launching our new proactive powers to drive systemic improvement



We issued our Model Complaints Handling Policy and guidance to Local Authorities and Health Boards



We continued the development of standardised data reporting for Public Bodies in Wales.



We provided 90 virtual training sessions to public bodies across Wales



We started four extended own initiative investigations, one of which has been concluded



We re-launched our first own initiative investigation at the Chartered Institute of Housing TAI Cymru conference



We embrace learning and welcome feedback

205 review cases were closed

9%

of the reviews identified we could do more, often as a result of new evidence provided by complainant

32 complaints about us were closed.

22%

of these were upheld or partially upheld.

51% of all complainants questioned were satisfied with our customer service...

...rising to **99%** amongst those satisfied with the outcome of their complaint.



We strive to ensure and promote accessibility, equality and diversity

87% of our customers questioned found it easy to contact us.

3

Sounding boards were run to understand the needs of our stakeholders.



We now comply with most of the Welsh Language Standards



We adopted a Race and Ethnicity at Work Charter



We appointed an Autistic Champion to raise awareness of neurodiverse issues.



We maintained the silver FairPlay Employer level for gender equality.



We pull together and support each other



We provided a range of wellbeing activities to support staff during the pandemic

77%

of staff completed 28 or more hours of continuing professional development.

We saw the average percentage of working days lost through staff sickness drop to

1.1%



We reduced our median Gender Pay Gap from 21% in 2019 to 5% in 2021.



We are accountable and transparent about our performance and use of resources

Our budget of **£5.1m** comprised of...

£4.1m from the Senedd

£974k from a Pension Fund surplus repayment

Our unit cost per case was **£674**

91% of our budgeted funding for new powers (£330k) was spent on implementation



We attended two scrutiny sessions with the Senedd.



We reduced our energy usage by 31%.



We maintained close links with colleagues in the UK, Europe and around the world.



We reduced our office waste by 85%.

182kg of CO₂ emissions were avoided.

Ask for: Communications

 01656 641150

Date: September 2021

 communications@ombudsman.wales

Cllr. Andrew Morgan
Rhondda Cynon Taf County Borough Council

By Email only: andrew.morgan2@rctcbc.gov.uk

Annual Letter 2020/21

Dear Councillor Morgan

I am pleased to provide you with the Annual letter (2020/21) for Rhondda Cynon Taf County Borough Council.

This letter discusses information from a year unlike any other in recent memory, and as such may not be useful for establishing trends or patterns. Information received during this remarkable year will, however, bring insights on how public services reacted in the face of unprecedented demand and the most difficult of circumstances.

During the past financial year, we have intervened in (upheld, settled or resolved at an early stage) the same proportion of complaints about public bodies, 20%, compared with 2019/20.

Regarding new complaints received relating to Local Authorities, the overall number decreased by 12.5% compared with last year. This reflects the reduction in complaints being reported by Local Authorities during the Covid-19 pandemic. My office intervened in a similar proportion of the cases closed as in the previous year (13%).

However, we referred a higher proportion of Code of Conduct complaints to a Standards Committee or the Adjudication Panel for Wales: 3.4% compared to 2% in the previous year. This higher referral rate was also accompanied by a sharp increase in the number of Code of Conduct complaints received.

During 2020/21, despite challenges caused by the pandemic, my office made great strides in progressing work related to Complaints Standards and Own Initiative Investigations. The theme and consultation period of the first wider Own

Page 1 of 9

Initiative Investigation – into Local Authority Homelessness Assessments - was launched in September 2020 and the report is due in the coming months. We also commenced 4 extended Own Initiative Investigations, where we extended the scope of our work on a complaint already under investigation.

Last year, my office also pushed ahead with two new publications – ‘Our Findings’ and our first Equality Report.

‘Our Findings’ will be accessed via the PSOW website and replaces the quarterly casebooks. Our Findings will be updated more frequently and will be a more useful tool in sharing the outcomes of investigations. Our first Equality Report highlights the work done to improve equality and diversity, and to ensure that our service is available to people from all parts of society.

Local Authorities in Wales continued to submit data about the complaints they handled to the Complaints Standards Authority (CSA) during 2020/21, as well as receiving a model complaints procedure and accessing 76 virtual training sessions.

The data submitted for 2020/2021 shows:

- Nearly 12,000 complaints were recorded by Local Authorities
- This equates to 3.77 for every 1000 residents.
- Nearly half (44%) of those complaints were upheld.
- About 75% were investigated within 20 working days.
- About 9% of all complaints closed were referred to PSOW.

The CSA will publish data to the PSOW website for the first time in the coming year, marking a key achievement in the progress of this work. Training sessions have been delivered to almost all Local Authorities in Wales, and our offer of training remains open ended and will be delivered free of charge.

A summary of the complaints of maladministration/service failure received relating to your Council is attached.


Also attached is a summary of the Code of Conduct complaints relating to members of the Council and to the Town & Community Councils in your area.

I ask that the Council takes the following actions:

- Present my Annual Letter to the Cabinet to assist members in their scrutiny of the Council’s complaints performance and any actions to be taken as a result.
- Engage with my Complaints Standards work, accessing training for your staff and providing complaints data.
- Inform me of the outcome of the Council’s considerations and proposed actions on the above matters by 15 November.

This correspondence is copied to the Chief Executive of your Council and to your Contact Officer. Finally, a copy of all Annual Letters will be published on my website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a stylized flourish at the end.

Nick Bennett
Ombudsman

cc.Chris Bradshaw, Chief Executive, Rhondda Cynon Taf County Borough
Council
By Email only: christopher.d.bradshaw@rctcbc.gov.uk

Factsheet

Appendix A - Complaints Received

| Local Authority | Complaints Received | Received per 1000 residents |
|------------------------------------------|----------------------------|------------------------------------|
| Blaenau Gwent County Borough Council | 15 | 0.21 |
| Bridgend County Borough Council | 31 | 0.21 |
| Caerphilly County Borough Council | 46 | 0.25 |
| Cardiff Council* | 96 | 0.26 |
| Carmarthenshire County Council | 27 | 0.14 |
| Ceredigion County Council | 32 | 0.44 |
| Conwy County Borough Council | 32 | 0.27 |
| Denbighshire County Council | 32 | 0.33 |
| Flintshire County Council | 59 | 0.38 |
| Gwynedd Council | 30 | 0.24 |
| Isle of Anglesey County Council | 18 | 0.26 |
| Merthyr Tydfil County Borough Council | 15 | 0.25 |
| Monmouthshire County Council | 20 | 0.21 |
| Neath Port Talbot Council | 19 | 0.13 |
| Newport City Council | 31 | 0.20 |
| Pembrokeshire County Council | 28 | 0.22 |
| Powys County Council | 38 | 0.29 |
| Rhondda Cynon Taf County Borough Council | 40 | 0.17 |
| Swansea Council | 73 | 0.30 |
| Torfaen County Borough Council | 12 | 0.13 |
| Vale of Glamorgan Council | 39 | 0.29 |
| Wrexham County Borough Council | 43 | 0.32 |
| Total | 776 | 0.25 |

* inc 2 Rent Smart Wales

Appendix B - Received by Subject

| Rhondda Cynon Taf County Borough Council | Complaints Received | % Share |
|-------------------------------------------------|----------------------------|----------------|
| Adult Social Services | 6 | 15% |
| Benefits Administration | 1 | 3% |
| Children's Social Services | 8 | 20% |
| Community Facilities, Recreation and Leisure | 1 | 3% |
| Complaints Handling | 5 | 13% |
| Covid19 | 1 | 3% |
| Education | 2 | 5% |
| Environment and Environmental Health | 1 | 3% |
| Finance and Taxation | 1 | 3% |
| Housing | 5 | 13% |
| Licensing | 1 | 3% |
| Planning and Building Control | 4 | 10% |
| Roads and Transport | 2 | 5% |
| Various Other | 2 | 5% |
| Total | 40 | |

Appendix C - Complaint Outcomes
 (* denotes intervention)

| County/County Borough Councils | Out of Jurisdiction | Premature | Other cases closed after initial consideration | Early Resolution/voluntary settlement* | Discontinued | Other Reports- Not Upheld | Other Reports Upheld* | Public Interest Report* | Total |
|------------------------------------------|---------------------|-----------|------------------------------------------------|----------------------------------------|--------------|---------------------------|-----------------------|-------------------------|-------|
| Rhondda Cynon Taf County Borough Council | 12 | 11 | 16 | 2 | 1 | 1 | 0 | 0 | 43 |
| % Share | 28% | 26% | 37% | 5% | 2% | 2% | 0% | 0% | |

Appendix D - Cases with PSOW Intervention

| | No. of interventions | No. of closures | % of interventions |
|------------------------------------------|----------------------|-----------------|--------------------|
| Blaenau Gwent County Borough Council | 1 | 17 | 6% |
| Bridgend County Borough Council | 2 | 30 | 7% |
| Caerphilly County Borough Council | 3 | 45 | 7% |
| Cardiff Council | 26 | 100 | 26% |
| Cardiff Council - Rent Smart Wales | 0 | 2 | 0% |
| Carmarthenshire County Council | 6 | 29 | 21% |
| Ceredigion County Council | 4 | 31 | 13% |
| Conwy County Borough Council | 5 | 31 | 16% |
| Denbighshire County Council | 2 | 31 | 6% |
| Flintshire County Council | 11 | 62 | 18% |
| Gwynedd Council | 5 | 27 | 19% |
| Isle of Anglesey County Council | 1 | 17 | 6% |
| Merthyr Tydfil County Borough Council | 0 | 14 | 0% |
| Monmouthshire County Council | 1 | 19 | 5% |
| Neath Port Talbot Council | 1 | 17 | 6% |
| Newport City Council | 5 | 29 | 17% |
| Pembrokeshire County Council | 3 | 26 | 12% |
| Powys County Council | 4 | 47 | 9% |
| Rhondda Cynon Taf County Borough Council | 2 | 43 | 5% |
| Swansea Council | 9 | 67 | 13% |
| Torfaen County Borough Council | 0 | 11 | 0% |
| Vale of Glamorgan Council | 5 | 38 | 13% |
| Wrexham County Borough Council | 6 | 48 | 13% |
| Total | 102 | 781 | 13% |

Appendix E - Code of Conduct Complaints

| County/County Borough Councils | Discontinued | No evidence of breach | No action necessary | Refer to Adjudication Panel | Refer to Standards Committee | Withdrawn | Total |
|------------------------------------------|--------------|-----------------------|---------------------|-----------------------------|------------------------------|-----------|-------|
| Rhondda Cynon Taf County Borough Council | 1 | 6 | 0 | 0 | 0 | 1 | 8 |

Appendix F - Town/Community Council Code of Complaints

| Town/Community Council | Discontinued | No evidence of breach | No action necessary | Refer to Adjudication Panel | Refer to Standards Committee | Withdrawn | Total |
|--------------------------------------------|--------------|-----------------------|---------------------|-----------------------------|------------------------------|-----------|-------|
| Llantwit Fardre Community Council | 2 | 0 | 1 | 0 | 0 | 0 | 3 |
| Pontypridd Town Council | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Taff's Well and Nantgarw Community Council | 6 | 1 | 0 | 1 | 0 | 0 | 8 |
| Ynysybwl & Coed-y-cwm Community Council | 0 | 2 | 0 | 0 | 0 | 0 | 2 |

Information Sheet

Appendix A shows the number of complaints received by PSOW for all Local Authorities in 2020/2021. These complaints are contextualised by the number of people each health board reportedly serves.

Appendix B shows the categorisation of each complaint received, and what proportion of received complaints represents for the Local Authority.

Appendix C shows outcomes of the complaints which PSOW closed for the Local Authority in 2020/2021. This table shows both the volume, and the proportion that each outcome represents for the Local Authority.

Appendix D shows Intervention Rates for all Local Authorities in 2020/2021. An intervention is categorised by either an upheld complaint (either public interest or non-public interest), an early resolution, or a voluntary settlement.

Appendix E shows the outcomes of Code Of Conduct complaints closed by PSOW related to Local Authority in 2020/2021. This table shows both the volume, and the proportion that each outcome represents for the Local Authority.

Appendix F shows the outcomes of Code of Conduct complaints closed by PSOW related to Town and Community Councils in the Local Authority's area. This table shows both the volume, and the proportion that each outcome represents for each Town or Community Council.

This page is intentionally left blank



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 NOVEMBER 2021

REVIEW OF THE ETHICAL STANDARDS FRAMEWORK IN WALES

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To advise Members of the publication of the report into Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

2. RECOMMENDATION

2.1 It is recommended the Committee review the findings of the report in preparation for any formal consultation by Welsh Government.

3. BACKGROUND

3.1 As reported at the Committee's meeting in March Welsh Government confirmed they would be reviewing the ethical framework and the model Code of Conduct following the coming into force of the Local Government & Elections (Wales) Act 2021.

3.2 The Ethical Standards Framework for Wales was established by Part 3 of the Local Government Act 2000 to promote and maintain high standards of ethical conduct by members and officers of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), a community council, a fire and rescue authority and a National Park authority in Wales.

3.3 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 Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'). These are included in the Conduct of Members (Principles) (Wales) Order 2001.

Further, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (“Model Code of Conduct”) provides for a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.

4. INDEPENDENT REVIEW OF THE ETHICAL FRAMEWORK IN WALES

- 4.1 An independent review of the Framework was undertaken by Richard Penn between April and July 2021 to assess whether the Framework remains fit for purpose. The review took into account the new legislative requirements set out in the Act and the current equality and diversity policy context.
- 4.2 The terms of reference of the review were to undertake a review of the whole framework to include:
- an audit of the Codes of Conduct adopted by authorities;
 - an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
 - whether the framework is still fit for purpose;
 - the role of Standards Committees;
 - an analysis of the arrangements and protocols in place to support members and staff; and
 - consideration of the current sanctions and whether they are still appropriate.
- 4.3 The final report was published on 14th October (attached at Appendix 1 to this report) concludes the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct.
- 4.4 The findings fall into categories based on whether they would need legislation to implement. Some recommendations need primary legislation (e.g. granting the Adjudication Panel for Wales the power to restrict reporting on sensitive cases), others require secondary legislation (such as updating the code of conduct itself) and some are matters of practice that can be implemented if the relevant parties are willing to do so. A summary of the report’s key findings can be found at Appendix 2 to the report.
- 4.5 Welsh Government will now consider the recommendations to amend the Model Code of Conduct in the short term. Any legislative change will be subject to a technical consultation with a planned implementation ahead of next May’s Local Elections. Welsh Government say action to address other recommendations in the report will be taken forward in partnership with key stakeholders in the medium to longer term.

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 NOVEMBER 2021

REPORT OF MONITORING OFFICER

BACKGROUND PAPERS

Penn Review of the Ethical Standards Framework in Wales (Published 14th October 2021)

Freestanding Matter

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

Independent Review of the Ethical Standards Framework in Wales

Richard Penn
Independent Consultant

July 2021

Table of contents

| | | |
|----|-----------------------------------------------------------------------|----|
| 1. | Executive summary | 3 |
| 2. | Background and methodology | 10 |
| 3. | The current ethical standards framework for local government in Wales | 15 |
| 4. | My findings | 28 |
| 5. | Conclusions and recommendations | 42 |

1 Executive summary

1.1 In March 2021 the then Minister for Housing and Local Government announced her intention to commission an independent review of the ethical standards framework for local government in Wales that was established by the Local Government Act 2000 and which has remained largely unchanged to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework. I was commissioned to undertake this review with the aim to report to Welsh Government Ministers by the end of June 2021. The intention is for any agreed changes to be made ahead of the local government elections in May 2022.

1.2 The review was to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees;
- an analysis of the arrangements and protocols in place to support members and staff;
- consideration of the current sanctions and whether they are still appropriate.

1.3 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome and met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

1.4 The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

1.5 The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and viewed by many as far superior to that currently used in English local government. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations being significantly reduced. The outcome of this first phase of the review builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. The already high ethical standards in Welsh local government would be further enhanced as a result.

1.6 My key findings and recommendations for change are detailed in Section 5 of this report and are summarised below:

- ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.

- ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

- ***Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements***

The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision. However, I have proposed a number of amendments to the Code:

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.

- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

'carry out your duties and responsibilities 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'

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately.

- **Increased use of local resolution of complaints**

The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

Greater use of the Ombudsman's discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

- **Restricted reporting orders**

The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask for amendments to the Appeal Tribunal

procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

- ***Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.***

- There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.
- ***An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.***

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

- ***Consideration of the current sanctions and whether they are still appropriate***

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, there is support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

- **Accessibility of the ethical standards framework**

The ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, a member of the public would have great difficulty in finding helpful information if they wished to complain, particularly if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. If the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

2 Background and methodology

- 2.1 At a meeting of the Partnership Council for Wales on 1 March 2021 the then Minister for Housing and Local Government discussed a range of issues connected to the implementation of the Local Government and Elections (Wales) Act 2021. One of the issues discussed was her intention to commission an independent review of the ethical standards framework. Council Leaders agreed this was timely in light of the changes to the framework set out in the Act and the time which has elapsed since the framework was first established.
- 2.2 The ethical standards framework in Wales was established by the Local Government Act 2000 and has remained largely unchanged, though there have been a number of small modifications to improve the operation of the framework over the last twenty years. The subordinate legislation underpinning the framework was last reviewed and amended in 2016. The Model Code of Conduct, first introduced in 2001, was significantly recast in 2008 and further amended in 2016.
- 2.3 The Local Government and Elections (Wales) Act 2021 which received Royal Assent on 20 January 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. There are a number of provisions which are fundamental to greater transparency and openness between local Councils and communities, and the Act includes measures to combat bullying and harassment amongst elected members and Council staff.
- 2.4 Since the framework was established the Welsh Government has continuously set out its commitment to equality and diversity, including through the making of the Well-being of Future Generations Act 2015. Most recently the Government has published the Gender Equality Review and is currently consulting on its new Race Equality Action Plan.
- 2.5 It is with this new legislation and policies in mind that Welsh Government concluded that the ethical standards framework needed to be reviewed to ensure that it remains fit for purpose, is open and transparent, and that it commands the confidence of all involved with the framework.
- 2.6 In taking this work forward it was seen to be essential to ensure that the local government family in Wales is fully involved in the review and informs the outcome. This should include, but not exclusively, local government members (Principal and Community Councils), monitoring officers, standards committees, heads of democratic services, the Welsh Local Government Association (WLGA), Lawyers in Local Government, One Voice Wales, Society of Local Council Clerks, the Public Services Ombudsman for Wales and citizens/representative organisations. This involvement needed to be demonstrated as part of the outcome of this work.

2.7 The following were the key components of delivery:

- an audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances.
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements.
- consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could / should be made to the current arrangements.
- consideration of the role of standards committees, including their role in relation to Community Councils and whether the establishment of sub-committees has any impact on the process of supporting Community Councils and dealing with complaints.
- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and authorities' approach to addressing concerns.
- consideration of the current sanctions and whether they are still appropriate.

2.8 The review will take place in two phases:

- The first phase involved engagement with partners to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase was to be a roadmap for building on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published will also be explored as part of this work.
- Phase two of the work will focus on working with partners and stakeholders to deliver the necessary changes.

2.9 I am a former Chief Executive of two major local authorities in England, and amongst the other posts that I have held since returning home to Wales I was the first NAW Commissioner for Standards from 2000 to 2012.

- 2.10 I welcomed the opportunity lead this review and to collect the widest possible evidence about the strengths and weakness of the current ethical standards framework from those involved in the operation of the framework, how it might be improved and how the requirements of the recent legislation will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?
- 2.11 I was required to produce a report on the review with my findings, conclusions and any relevant recommendations.
- 2.12 I was referred initially to a range of documents in the public domain and in the course of my review I received a large number of other relevant documents, most of which are in the public domain but a number of which were submissions by individual consultees.
- 2.13 My investigation has included a review of all of these documents together with interviews with a wide range of stakeholders involved in the operation of the ethical standards framework in Wales.
- 2.14 I met with:

Welsh Government officials

Deputy Director, Local Government Democracy Division

Head of Democracy, Diversity and Remuneration Branch

Former Head of the Ethics and Regulations Team

Policy lead, Ethical Standards Framework

Head of Local Government Partnerships Policy

Local Government Partnerships Policy - Community Councils & Regulation

Head of Fire & Rescue Services Branch, Community Safety Division

Head of Landscape & Outdoor Recreation, Economy, Skills and Natural Resources

Head of Welsh Tribunals Unit

Welsh Local Government Association

Head of Policy (Improvement and Governance)

Policy and Improvement Officer (Democratic Services)

One Voice Wales

Chief Executive

Deputy Chief Executive and Resources Manager

Society of Local Councils Clerks

Wales Policy Liaison Officer

Public Services Ombudsman for Wales

Ombudsman

Director of Policy, Legal and Governance

Adjudication Panel for Wales

APW President

Monitoring Officers

Monitoring Officer of Caerphilly County Borough Council

Monitoring Officer of Cardiff Council

Monitoring Officer of Ceredigion County Council

Monitoring Officer of Conwy County Borough Council

Monitoring Officer of Denbighshire County Council

Monitoring Officer of Flintshire County Council

Monitoring Officer of Gwynedd Council

Monitoring Officer of Monmouthshire County Council

Monitoring Officer of Powys County Council

Monitoring Officer of Rhondda Cynon Taf County Borough Council (written submission)

Monitoring Officer of Vale of Glamorgan Council

Monitoring Officer of Wrexham County Borough Council

Meeting of Monitoring Officers Group

Fire and Rescue Authorities

Monitoring Officer of South Wales Fire and Rescue Authority

National Park Authorities

Monitoring Officer of Pembrokeshire Coast National Park Authority

Chairs of Standards Committees

Mid and North Wales Forum for Chairs of Standards Committees

Chair of Cardiff Standards Committee

Chair of Rhondda Cynon Taff Standards Committee

Chair of Vale of Glamorgan Standards Committee

Chair of Mid and West Wales Fire and Rescue Authority Standards Committee

2.15 I thank all those that I interviewed as part of this review for their willingness to share with me openly and comprehensively their experience and their professional observations, opinions and conclusions about the operation of the ethical standards framework in Wales, and what needs to change to ensure that the framework is fit for purpose.

3 The current ethical standards framework for local government in Wales

3.1 Part III of the Local Government Act 2000 (the 2000 Act) sets out an ethical standards framework for local government in Wales. It created a power for the National Assembly for Wales to issue a Model Code of Conduct to apply to members and co-opted members of all relevant authorities in Wales (a county/county borough council; community council; fire and rescue authority; and a national park authority). This power was transferred to Welsh Ministers by the Government of Wales Act 2006. In 2008 (as amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

3.2 **The Model Code of Conduct** sets out what is required of all elected members in respect of appropriate standards of conduct in public office. For example, the Code requires members to show respect and consideration for others and not to use bullying behaviour or to harass any person. Councillors must act objectively and in the public interest, having regard to the advice of officers, and they must not disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without express consent or unless required by law to do so.

3.2.1 The Local Government Act 2000 empowered the National Assembly to issue principles which those elected to relevant authorities must have regard to when undertaking their role. The Code of Conduct is based on these principles which are designed to promote the highest possible standards of conduct. These principles draw on the 7 Principles of Public Life which were set out in the Nolan Report 'Standards of Conduct in Local Government in England, Scotland and Wales'. Three more principles were added to these: '*a duty to uphold the law*', '*proper stewardship of the Council's resources*' and '*equality and respect for others*'. The current principles were set out in a statutory instrument (1. The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166))

3.2.2 Members elected to relevant authorities give generously of their time and commitment for the benefit of their communities. The 10 principles provide a framework for channelling that commitment in a way which will reflect well on the Councillor and their authority, and give the local community confidence in the way that the authority is governed.

3.2.3 The individual sections of the Code of Conduct are designed to support the implementation of the 10 Principles of Public Life as detailed 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, or to avoid a disadvantage for, 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.

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.

3.2.4 The Principles are not part of the Model Code of Conduct and failure to comply with the Principles is not of itself indicative of a breach of the Code. However, it is likely that, for example, a failure 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.

3.2.5 All relevant authorities in Wales 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 Code. This was intended to give certainty both to elected members and to the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for those elected members who serve on more than one authority and for the general public.

3.2.6 All elected members, when they sign the Declaration of Acceptance of Office, confirm that they will comply with their Council's Code of Conduct. It is the member's personal responsibility to ensure that they understand their obligations under the Code and act in a way which shows that they are committed to meeting the high standards of conduct that are expected of them as a member. Ultimately, as a member, they are responsible for the decisions they take and can be held to account for them. However, this does not imply that they can take decisions which breach the Code or which are contrary to advice simply because the decision is theirs to take.

3.2.7 The Public Services Ombudsman for Wales has issued very helpful guidance to assist Councillors in deciding when the Code of Conduct applies to them:

- Conduct in public and private life

Members are entitled to privacy in their personal lives, and many of the provisions of the Code only apply when he or she is acting as an elected member or acting as a representative of the Council. However, as there may be circumstances in which a member's behaviour in private life can impact on the reputation and integrity of the Council, some of the provisions of the Code apply at all times. When reaching a decision as to whether the Code applies at a particular time the Ombudsman has regard to the particular circumstances and the nature of the conduct at that time.

- When does the Code apply?
 - whenever a member acts in an official capacity, including whenever they are conducting the business of their authority or acting, claiming to act, or give the impression that they are acting, in their official capacity as a member or as a representative of their authority.
 - at any time, if the member conducts themselves in a manner which could reasonably be regarded as bringing their office or their authority into disrepute or if they use or attempt to use their position to gain an advantage or avoid a disadvantage for themselves or any other person or if they misuse their authority's resources.

- where a member acts as a representative of their Council on another relevant authority, or any other body, they must, when acting for that other authority, comply with their Council's Code of Conduct. When nominated by their Council as a trustee of a charity they 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.
- if a member is acting as a representative of his or her Council on another body, for example on an event committee, which does not have a Code of Conduct relating to its members, the member must comply with their Council's own Code unless it conflicts with any legal requirements that the other body has to comply with.
- if a member refers to them self as Councillor, the Code will apply. This applies in conversation, in writing, or in the use of electronic media. There has been a significant rise in complaints to the Ombudsman concerning the use of Facebook, blogs and Twitter. If the member refers to their role as a Councillor in any way or comments that they make are clearly related to that role then the Code will apply to any comments that are made there. Even if the member does not refer to their role as a Councillor, the comments may have the effect of bringing their 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 members with a clearer idea about how they can use social media, the possible pitfalls and how to avoid them.
- if a member is suspended from office for any reason, they must still observe those elements of the Code which apply, particularly as set out in paragraph 2(1)(d), while they are suspended.

3.3 The ethical standards framework in Wales is intended to promote high standards of conduct by Councillors. The **Standards Committees** of principal councils established under section 53 of the 2000 Act have a key role in this regard. They are made up of independent lay members together with elected members of the authority with an independent member as Chair.

3.3.1 The 'general functions' of a Standards Committee are:

- promoting and maintaining high standards of conduct by members of the authority;

and

- assisting members to observe the Code of Conduct adopted by the Council

3.3.2 A Standards Committee also has the following 'specific functions':

- advising the authority on the adoption or revision of a Code of Conduct;

- monitoring the operation of the Code of Conduct;

and

- advising, training or arranging training for members on matters relating to the Code of conduct.

3.3.3 Under other provisions of the 2000 Act, Standards Committees also consider applications by members for dispensation to participate in business for which they have a prejudicial interest. They consider and adjudicate on alleged breaches of the Code of Conduct following investigation by the Public Services Ombudsman or, less often, the relevant Monitoring Officer. Although there has been a tendency for some Committees to see the latter as their key role, their primary focus should be on proactive measures to support members of their Council to maintain appropriate standards of conduct and thereby avoid breaches of the Code. Standards Committees do this through a variety of means, such as working with political group leaders, attending and monitoring Council meetings and reporting annually to Councils on their activities and the standards of conduct within the authority.

3.3.4 The Standards Committee of a principal Council also exercises the above functions in respect of members of Town and Community Councils in its area. However, subject to consultation with those Councils in its area, a sub-committee may be established to undertake all the functions of a Standards Committee in relation to Community Councils. Standards Committees of principal Councils are required to assist members and co-opted members of Community Councils in their area to observe the Code of Conduct, and to arrange for advice and training to be provided. Whilst Community Councillors do not act on decision-making bodies such as Planning Committees they are called upon to take decisions on the allocation of funding from the Council's precept and to offer guidance, drawing on valuable local knowledge, to the County Council about the impact of planning applications. It is imperative that Community Council members are fully aware of the Code of Conduct and its implications for their decision-making and whether they should be involved in making a decision.

3.3.5 When a case is referred to a Standards Committee its role is to decide whether a member has breached the Code and whether a sanction should be imposed. Hearings are normally 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,

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

3.3.6 A member subject to a sanction may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a Standards Committee

3.4 **The Public Services Ombudsman** for Wales has powers to investigate allegations that individual Councillors in Wales have failed to comply with their Council's Member Code of Conduct. A complaint about a failure to comply with the Code of Conduct must be made direct to the Ombudsman, who will decide whether it is appropriate to investigate the matter.

3.4.1 Where the Ombudsman considers a complaint warrants investigation, the investigation will usually be undertaken by the Ombudsman. However, the Ombudsman has powers to refer complaints to the appropriate local authority Monitoring Officer for investigation and determination by the local Standards Committee. The Ombudsman may refer a report on the outcome of an investigation by his office to the relevant Standards Committee or, generally in more serious cases, the Adjudication Panel for Wales.

3.4.2 The Public Services Ombudsman for Wales investigates complaints that members of relevant 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 the Ombudsman uses a two-stage test:

- the first stage is to establish whether there is direct evidence that a breach of the Code actually took place. The level of proof that is required is 'on the balance of probabilities'
- if that first evidential stage is met, at the second stage the Ombudsman considers whether an investigation or a referral to a Standards Committees or the Adjudication Panel for Wales is required 'in the public interest'. Public interest factors include:
 - the seriousness of the breach
 - whether the member deliberately sought personal gain for themselves or another person at the public expense
 - whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
 - whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
 - whether there is evidence of previous similar behaviour on the part of the member

- whether the investigation or referral to a Standards Committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a Standards Committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (the Ombudsman takes account of the outcomes of previous cases considered by Standards Committees 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.

3.4.3 These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case. The Ombudsman has a wide discretion as to whether to begin or continue an investigation. He has revised the two-stage test adopted by his predecessor in order to provide greater clarity on how he will usually exercise his discretion and to secure a degree of consistency and certainty in the decisions that he reaches.

3.4.4 When the Ombudsman has investigated a complaint he may refer the matter to a relevant Standards Committee or to the Adjudication Panel for Wales for determination. This will depend on the nature of and individual circumstances of the alleged breach. When issuing his report the Ombudsman reflects on and analyses the evidence gathered and draws his conclusions as to whether it is likely that a breach of the Code has occurred. However, the authority and responsibility to make a determination of breach rests solely with a Standards Committee or the Adjudication Panel for Wales.

3.5 **Local Resolution Process**

Most principal councils in Wales have adopted 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 effective at resolving many of these kinds of complaints, and there are a number of Community Councils that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales. Typically these complaints will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code of Conduct 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 the Ombudsman about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

3.5.1 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 result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers 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.

3.6 **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent tribunal established under Part III of the Local Government Act 2000 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.

3.6.1 The Adjudication Panel for Wales has two statutory functions in relation to breaches of the Code of Conduct:

- to form Case or Interim Case Tribunals to consider references from the Public Service Ombudsman for Wales following his 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 in Appeal Tribunals.

3.6.2 The Adjudication Panel for Wales' 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)).

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

3.6.4 Anyone wishing to respond to a reference from the Public Services Ombudsman for Wales or to make an application for permission to appeal to the Adjudication Panel for Wales must complete and send the relevant form to the Panel. At an Adjudication Panel for Wales Hearing the Panel is composed of a legally qualified chairperson and two lay members. Legally qualified members can also sit as a lay member. Panel Hearings are normally held in public and take place close to the authority area. The Adjudication Panel for Wales publishes its decisions on its website. Decisions of Case Tribunals can be appealed on limited grounds to the High Court, and permission to appeal to the High Court must first be sought from the High Court.

3.6.5 When the Public Services Ombudsman refers a case to the Adjudication Panel for Wales its role is to determine whether a member has breached the Code and whether a sanction should be imposed. The powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or
- 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.

3.6.6 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 of Conduct, 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'*).

3.7 The role of the **Monitoring Officer** of a principal council

The Monitoring Officer is an officer employed by the County or County Borough Council. Among many other things they advise and assist County Councillors. Monitoring Officers may offer some training and advice to Community Councils in their area. The Monitoring Officer has a significant role in the local resolution process outlined earlier and they will also work closely in advising the Council's Standards Committee.

3.8 The role of the **Clerk** of a Community Council

The Clerk has a complex role and advises Community Councillors on relevant legislation, including matters relating to the Code of Conduct and on the Council's Standing Orders. The Clerk will work closely with the Chair 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. Clerks may approach their relevant County or County Borough Council's Monitoring Officer for advice and support.

3.8.1 The Clerk is an employee of the Council and is not required to abide by the Code of Conduct. Any issues regarding the performance of the Clerk are personnel matters and should be addressed using appropriate employment procedures. The Public Services Ombudsman for Wales cannot consider complaints regarding the performance of the Clerk as this is a matter for the Council as the Clerk's employer.

3.9 **Complaints to the Public Services Ombudsman for Wales**

3.9.1 In 2019/20 the Public Services Ombudsman received 231 new Code of Conduct complaints - a decrease of 18% compared to 2018/19:

| | 2019/20 | 2018/19 |
|------------------------------------|---------|---------|
| Town and Community Councils | 135 | 190 |
| County and County Borough Councils | 96 | 91 |
| National Parks | 0 | 1 |
| Total | 231 | 282 |

3.9.2 This decrease in 2019/20 related almost wholly to the reduction in complaints made by or against members of Community Councils. The Ombudsman found this encouraging and suggested in his Annual Report for 2019/20 that standards of conduct of members of

these bodies may be improving and/or that the local resolution of issues may be taking place with good effect. Nevertheless, he is still receiving complaints in respect of a small number of Community Councils which appear to border on frivolity or are motivated by political rivalry or clashes of personalities, rather than being true Code of Conduct issues. When I spoke with him he exemplified this by referring to one complaint he had received that one member of a Community Council had been clicking his biro aggressively at another member. 18% of the Community Council complaints received related to members of just one body and were, in effect, 'tit for tat' complaints. The Ombudsman has, where appropriate, advised members that making frivolous and/or vexatious complaints is a breach of the Code of Conduct in itself.

- 3.9.3 In 2019/20 135 of the 231 complaints considered by the Public Services Ombudsman for Wales concerned Community Councillors, a welcome 18% reduction from the 190 complaints about Community Councillors considered by the Ombudsman in 2018/19. However, whilst the Ombudsman hoped that this was a sign that standards of conduct in Community Councils in particular was improving, and although the Ombudsman's Annual Report for 2020/21 is not yet published, when I spoke with him he gave me advance notice of a 47% rise in the number of complaints he received in 2020/21. He also told me that the early indications are that there will be a further significant increase in the current year (2021/22). He expressed concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view mandatory training of all Councillors combined with increased local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.
- 3.9.4 As in previous years, the majority of the Code of Conduct complaints received during 2019/20 related to matters of '*promotion of equality and respect*' (49%) and '*disclosure and registration of interests*' (17%). The Ombudsman expressed concern that these themes continue to dominate and that there has been a year on year increase in the number of complaints where bullying behaviour is being alleged, particularly from Clerks or employees/contractors of principal councils/County and County Borough Councils or Community Councils. He considers that members could benefit from training or refresher training on these subjects although his impression from investigations is that many members of Community Councils often do not take up opportunities offered to them to receive training on the Code of Conduct.
- 3.9.5 The Ombudsman's view, endorsed by all of those I met with during my review, is that Code of Conduct training is essential to becoming a 'good Councillor', and that members should undertake this training as soon as they become elected/co-opted and that there should be regular refreshment on the provisions and requirements of the Code of Conduct. There is currently no statutory obligation for members of Community Councils to complete such training although they are required to comply with the Code.
- 3.9.6 In 2019/20, 202 or approximately 86% of all Code of Conduct complaints were closed after assessment against the Public Services Ombudsman's two-stage test or after a complaint was withdrawn at the assessment stage. This proportion is only marginally higher compared to the previous year (83%). The remaining complaints taken forward to

investigation represented the most serious of the complaints received.

3.9.7 During the Ombudsman's investigation, evidence gathered is reviewed to assess whether it remains in the public interest to continue the investigation. Where it appears that investigating a matter is no longer in the public interest, the decision is made by the Ombudsman to discontinue that investigation. Sometimes the investigation finds no evidence of a breach. Finally, when an investigation is concluded, the Ombudsman can determine that '*no action needs to be taken*' in respect of the matters investigated. This will often be the case if the member has acknowledged the behaviour may be suggestive of a breach of the Code and has expressed remorse or taken corrective or reparatory action to minimise the impact of it on the individual, the public or the authority concerned. The Ombudsman made one or the other of these above determinations in 85% of the Code of Conduct investigations in 2019/20.

3.9.8 In cases which cannot be concluded in this manner or which point to serious breaches of the Code, it is necessary for the Ombudsman to refer the case to a relevant local Standards Committee or to the Adjudication Panel for Wales for consideration. In 2019/20 5 referrals were made, 2% of all the Code of Conduct complaints that were closed, compared to 8 or 3% in 2018/19. In 2019/20 these referrals were:

- 4 referrals to Standards Committees
- 1 referral to the Adjudication Panel for Wales

3.9.9 The Adjudication Panel for Wales or the relevant local Standards Committee considers the evidence, together with any defence put forward by the member concerned. It then determines whether a breach of the Code has occurred and if so, what penalty, if any, should be imposed.

3.9.10 The 4 referrals to Standards Committees in 2019/20 concerned behaviour which was considered to be disrespectful, capable of being perceived as bullying and/or disreputable behaviour. One of the cases referred involved conduct indicating bullying behaviour towards an employee of a contractor of the authority. When the 2019/20 Annual Report was published, the Adjudication Panel for Wales was considering an appeal on the issue of sanction only in that case. Two of the referrals featured behaviour which suggested that the members had used their positions improperly to create an advantage or disadvantage for themselves or others. When the 2019/20 Annual Report was published, these two referrals were awaiting determination.

3.9.11 The referral to the Adjudication Panel for Wales concerned the conduct and behaviour of a member in their private life and considered whether the behaviour complained about was capable of impacting on and bringing their authority into disrepute. It also concerned whether that member had used their position improperly for the advantage of another. In the case of this referral, the Panel determined there were serious breaches of the Code. As a result, the member was suspended from holding office for 3 months.

3.9.12 Between 2016/17 and 2018/19, the Adjudication Panel for Wales and Standards Committees upheld and found breaches in 88% of referrals by the Ombudsman. In 2019/20 Standards Committees and the Adjudication Panel for Wales also determined 5 cases referred by the Ombudsman. In all these cases, the Standards Committees and the Panel found serious breaches of the Code. Some of the breaches found included serious examples of disrespectful, disreputable and improper behaviour on the part of members towards other members and members of the public. In one case, the member was found to have been in breach of the Code for attempting to interfere with and prejudice the Ombudsman's investigation of a complaint made about them. In all cases, the members, or former member, concerned were suspended for a period of 4 months.

3.9.13 As is clear from these statistics above, the Public Services Ombudsman for Wales makes referrals to a Standards Committee or the Adjudication Panel for Wales only in a very small number of cases, and he does not believe that the case referrals are indicative of a wider decline in member conduct in Welsh local government. Nevertheless, the outcomes of these referrals demonstrate the importance of standards of conduct in public life and provide a helpful indication to members of all authorities as to the behaviours expected of them. Even when the Ombudsman does not refer a case, the investigation is used as an opportunity to promote good practice, and the members investigated are reminded of their obligations under the Code and, where relevant, further training or engagement with the authority to prevent further possible breaches is proposed. Members are also sometimes made aware that the matter could be taken into consideration in the event of any future complaints of a similar nature. The Ombudsman is clear in his report that it is important that innovative and pragmatic ways to resolve matters to ensure a timelier outcome for all concerned should be deployed.

4 My findings

4.1 In the course of my review I have met with most of those individuals and organisations that are involved in the operation of the ethical standards framework in Wales. The overwhelming consensus is that the current framework is 'fit for purpose', works well in practice and a large number of those that I consulted proposed that '*if it ain't broke don't fix it*'. Many respondents commented that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. However, it is also clear that with some minor adjustments and amendments to the current framework this could result in a lower number of low level complaints made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being significantly reduced, and that the already high ethical standards in Welsh local government could be further enhanced.

4.2 The Model Code of Conduct

4.2.1 Clear, relevant, and proportionate Codes of Conduct are central to maintaining ethical standards in public life. Codes of Conduct were identified by the Committee on Standards in Public Life in its first report in 1995 as one of the essential 'strands' in promoting and maintaining ethical standards in public life, at a time when many public sector organisations did not have them. Codes of Conduct play an important role in maintaining ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave.

4.2.2 The power to issue a Code of Conduct was transferred to Welsh Ministers by the Government of Wales Act 2006, and in 2008 (amended on 1 April 2016), Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt. In Wales, unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity (including if they claim to act or give the impression that they are acting in that capacity), and when a Councillor behaves in a way that could '*reasonably be regarded as bringing [their] office or [their] authority into disrepute*'. This includes any time a Councillor attempts to use their position to gain advantages (or to avoid disadvantages) for themselves or others, or misuses their local authority's resources. As noted earlier, the Public Services Ombudsman for Wales has also issued guidance of the application of the Code of Conduct to social media use.

4.2.3 I was required as part of this review to conduct an audit of the Codes of Conduct adopted by all the relevant authorities in Wales against the Model Code to identify any local variances and to consider whether the ten 'principles' of conduct are still relevant and whether the Model Code of Conduct needs updating. This would include identification of areas where improvements could/should be made. The Monitoring Officers of all

principal councils, National Parks Authorities, and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a County Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half of local authorities also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

- 4.2.4 Paragraph 17 of the Model Code requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's monitoring officer, or in relation to a Community Council, to the authority's 'proper officer' of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations but a number of authorities have specified a threshold beyond which there must be a declaration. This ranges from £21 to £100 and there is agreement that the threshold should be specified in the Code to ensure consistency across Wales.
- 4.2.5 I was also required to explore options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Local Government and Elections (Wales) Act 2021 to stop Councillors' addresses being published. As I understand it, the law requiring the publication of the home addresses of Councillors was changed in the Local Government and Elections (Wales) Act 2021 so Councils will no longer do this from May 2022. This is for the safety and privacy of members, and reflects the fact that email or phone is now a more usual way of contacting members. However, Regulations issued under the Local Government Act 2000 still require members to include their home address in the Council's Register of Interests so the legislation is not in alignment. There is agreement that the Code of Conduct should not require Councillors to disclose their home address to declare the home address, and that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'

- 4.2.6 The Public Services Ombudsman has raised an issue in relation to the definition of 'person', a term frequently used in the Model Code of Conduct. A 'person' is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Ombudsman has had to rely on the definition in the Interpretation Act 1978 which is 'a body of persons corporate or unincorporate'. The Ombudsman has been challenged when he has tried to use his powers to obtain information from a company or a charity and he has to threaten and or use powers to formally bring criminal proceedings and or contempt proceedings under current legislation for failing to cooperate with the investigation by the Ombudsman. So a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

4.2.7 Paragraph 4a of the Model Code of Conduct requires that a member must:

'carry out your duties and responsibilities 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'

There is concern that this provision does not include all protected characteristics, and the view from consultees is that even though no problems have resulted as yet from the narrow coverage of this provision it should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

4.2.8 It is clear that there is the potential for breaches of the Code of Conduct resulting from the extensive and increasing use being made by elected members of a range of social media. The Welsh Local Government Association has produced useful guidance on social media in *'Social Media: A Guide for Councillors'*. The guidance provides members with advice about how to use social media, the possible pitfalls and how to avoid them. It reminds members that whenever something is posted on social media it becomes a publication, and is effectively made a broadcast in the public domain that is subject to both the Code of Conduct and to various laws. The WLGA guidance reminds members that the Code of Conduct applies to members whenever they are *'Conducting the business of your authority, acting, claiming to act or give the impression you are acting in your official capacity as a member or representative of your authority'*, and the Code applies if a member conducts them self *'in a manner which could reasonably be regarded as bringing your office or your authority into disrepute'*. If a member can be identified as a Councillor when using social media, either by the account name or how they are described or by what they comment on and how they comment, the requirements of the Code of Conduct apply. If a member says something that could be regarded as bringing their office or authority into disrepute the Code applies even if the member is not apparently acting in an official capacity or does not identify him or herself as a member. The Ombudsman's guidance states that:

'Making unfair or inaccurate criticism of your authority in a public arena might well be regarded as bringing your authority into disrepute', and in the same way that you are required to act in Council meetings or in your communities you should:

- show respect for others - do not use social media to be rude or disrespectful
- not disclose confidential information about people or the Council
- not bully or intimidate others - repeated negative comments about or to individuals could be interpreted as bullying or intimidation
- not try to secure a benefit for yourself or a disadvantage for others

- abide by the law on equality - do not publish anything that might be seen as racist, sexist, ageist, homophobic, anti-faith or offensive to any of the groups with protected characteristics defined in the Equality Act 2010, even as a joke or *'tongue in cheek'*

This helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.

4.2.9 Criminal convictions

6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. It states:

(You must) 'report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty)'

In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened until the Monitoring Officer's DBS checks have identified convictions or the matter has been reported in the press. The Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

4.3 Training for Councillors

4.3.1 Without exception, every individual or organisational representative that I met in the course of this review expressed the view that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. As was demonstrated in the audit of the Codes of Conduct adopted by all the relevant authorities mandatory training on the Code of Conduct is already a requirement of more than half of the principal councils so this would not be a controversial development for members of principal councils. However, although all members of Community Councils are currently required under the 2004 Order to be bound by the Code of Conduct it may be seen as a matter of controversy for them to be required also commit to training without due notice so advice that this is the case could be provided to all those considering standing for

election. Alternatively, it may be easier to amend the Code of Conduct to require those subject to the Code to undergo appropriate training on the Code.

4.3.2 If initial and refresher training on the Code is made mandatory there will need to be consideration of how that training can be resourced and delivered. At the moment many Monitoring Officers provide training on the Code of Conduct not only to their own members but also to members of Community Councils in the area. Some of the larger Community Councils arrange the training themselves, often using the training materials developed by One Voice Wales on the Code of Conduct and wider governance matters. Sometimes One Voice Wales provides the training direct but this has resource implications particularly for the smaller Community Councils.

4.4 **Standards Committees and Independent Chairs**

4.4.1 I met with a number of Independent Chairs of Standards Committees and also attended a meeting of the North Wales Forum for Chairs of Standards Committees in the course of this review. I was struck by the variation in the way that Standards Committees in Wales see their remit and at the role played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Community Councils in their area. In a number of authorities the Independent Members of the Committee attend meetings not only of their own Council but also meetings of the Community Councils in their area, recording their assessment of the meeting generally and the conduct of members specifically and feeding this assessment back to the Clerk and Chair of the Community Council. They stand ready to intervene if necessary to assist the Council and its Clerk to deal with challenging and inappropriate behaviour by members of that Council and, in one case, the Independent Chair monitors the situation in particularly problematic Community Councils in his or her area and intervenes to 'police' the behavior of the members involved.

4.4.2 There needs to be a consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the local situation for the principal authority concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

4.4.3 The Local Government and Elections (Wales) Act 2021 has, at its core, the principles of democracy, diversity, transparency and accountability to the citizens of Wales. The Act includes a number of provisions which are fundamental to greater transparency and

openness between local Councils and communities, as well as measures to combat bullying and harassment amongst elected members and Council staff. These provisions include:

- a new duty on leaders of political groups in principal councils to take reasonable steps to promote and maintain high standards of conduct by the members of their group
- a requirement for the group leader(s) to co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct across the Council
- new functions for Standards Committees to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties
- a requirement for the Standards Committee to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards. This report at the end of each financial year should describe 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 within three months of its receipt. This new duty will help to ensure that all Standards Committees adopt good practice and that standards issues are considered regularly (at least annually) by all Council members.
- a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include provision of training on the Code of Conduct at appropriate intervals.

4.4.4 There is seen to be a need for initial training of members of Standards Committee members, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses. The initial training should be refreshed immediately prior to a case being heard as well.

4.4.5 There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. I attended a meeting of this Forum and had a very useful exchange with the Chairs and Monitoring Officers who attended. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and that the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently would encourage consistency of approach and the adoption of best practice across Wales.

4.4.6 The Public Services Ombudsman for Wales accepts that there is a need for more references back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to *'nip things in the bud'* at a local level.

4.4.7 I was asked as part of my review to consider whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of its Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

4.5 **Community Councils**

4.5.1 There is agreement by all those that I met in the course of the review that local resolution combined with the mandatory training of all members has the potential to provide a means for resolving many issues locally before they get out of hand, and to prevent low-level complaints and 'grumbles' about fellow members turning into formal complaints to the Ombudsman that he either has to deal with or refer back for local consideration. Ultimately, however, the success of any approach relies on the co-operation and actions of individual members and the Code of Conduct regime must remain in place to deal with instances of serious misconduct.

4.5.2 Many of those I have spoken with expressed serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Community Councils. In particular, conduct perceived as bullying or harassment in the past has had an adverse impact on the ability of some Councils to retain members and Council officers. Less serious, but nonetheless disruptive behaviour by members, which falls short of a failure to comply with the Code, can also frustrate the effective conduct of Council business. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Community Councils that have given rise to a disproportionate number of complaints in the past. His approach is that bullying and harassment, or lack of respect will simply not be tolerated. Guidance being prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and

inappropriate behaviour, including advice on formulating an effective complaint. This guidance for members of Community Councils emphasises the need for effective relations between members and officers, within a culture of mutual respect and consideration.

4.6 Local resolution of complaints

4.6.1 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 result in an apology being made by the member concerned. However, where a member has repeatedly breached their authority's local protocol then the Ombudsman expects the Monitoring Officer to refer the matter back to him, and if he sees a pattern of similar complaints being made by the same members he considers 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.

4.6.2 Most principal Councils in Wales have adopted 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 effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. This provides guidance relevant to Town and Community Councils in formulating and operating such protocols. Typically these complaints 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 the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal council's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

4.7 The Public Services Ombudsman for Wales

4.7.1 Section 68 of the 2000 Act empowers the Public Services Ombudsman for Wales to issue guidance to relevant authorities on matters relating to the conduct of members and co-opted members of those authorities. The Ombudsman has issued two sets of guidance under these powers to assist members in understanding their obligations under the Code of Conduct. Both sets of guidance are fundamentally the same in respect of the interpretation of the Code, but one version is tailored specifically to the context within which Town and Community Councillors operate. Guidance issued under these powers, most recently in 2016, is subject to periodic review in light of the

operation of the Code, emerging case-law and changes to the Code itself. The current guidance has been reviewed and updated primarily to include more recent decisions of Standards Committees and the Adjudication Panel for Wales. The opportunity has also been taken to clarify and, in some cases, strengthen the wording of the guidance, for example, in relation to bullying and harassment of fellow members and officers and the disclosure of interests.

4.7.2 Section 69 of the 2000 Act empowers the Public Services Ombudsman to investigate allegations by any person that a member has failed to comply with their relevant authority's Code of Conduct. The Ombudsman may also investigate potential breaches of the Code that have come to the Ombudsman's attention during the course of an investigation. The Ombudsman has regard to the content of his guidance on the Code when exercising these powers. The guidance may also be taken into account by Standards Committees and the Adjudication Panel for Wales when exercising their respective functions.

4.7.3 The two-stage Public Interest Test

The Ombudsman has wide discretion under the 2000 Act to determine whether it is appropriate to investigate a complaint made to his office. All too often, it has been necessary for the Ombudsman and his predecessors to express concern about the number of low-level, tit-for-tat complaints by members which border on frivolity, or which are motivated by political rivalry or personality clashes, rather than true Code of Conduct issues. The two-stage test was first introduced in 2015 and is kept under review. The purpose of the test is to provide greater clarity, and a degree of certainty and consistency, in the exercise of the Ombudsman's discretion as to whether an investigation is in the public interest. This ensures that finite resources are targeted towards the more serious allegations received by the Ombudsman. Often, cases are not taken forward because they fail to satisfy the first stage test due to a lack of direct evidence that a breach may have taken place. This has been a particular feature of complaints received about members of Town and Community Councils. The Ombudsman has continued to work with One Voice Wales and the Society of Local Council Clerks on the development of guidance being prepared by them on how to formulate an effective complaint. The Ombudsman considers that the involvement of Standards Committees in applying the two-stage test is impractical, not least as it may be perceived as prejudicing the later consideration of any report of a subsequent investigation that has been referred back to a Committee. It would probably also require primary legislation to make this a function of a Standards Committee or some other person or body. The Ombudsman has powers under section 70 of the 2000 Act to refer complaints for local investigation by Monitoring Officers. However, Monitoring Officers raised concerns about the exercise of these powers due to the lack of available resources to undertake local investigations effectively. There is also a reluctance on the part of Monitoring Officers to be involved in the investigation of complaints against members of their own authorities for understandable reasons.

- 4.7.4 A number of consultees expressed concern that the Ombudsman handled complaints through desk exercises with no detailed investigation being undertaken, and the validity of the two-stage test was also questioned. The first stage of the test was considered to be objective and based on reasonably clear criteria. However, the second stage 'public interest' test was considered to be subjective and based mainly on the Ombudsman's opinion. It was suggested that the 'public interest' test should be applied by a wider 'audience' appointed for the purpose, such as the Standards Committee of the principal council for the area. There was also concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. The exercise of the Ombudsman's discretion more towards referral than at present would be welcome.
- 4.7.5 There is a concern that the investigations undertaken by the Ombudsman take too long, linked to a concern that the power to suspend the member concerned whilst the investigation is being carried out is not being exercised by the Adjudication Panel for Wales though a referral by the Ombudsman. This can mean that a member facing serious allegations of a criminal nature may still be able to act as a Councillor with potential implications for the safeguarding of members of the public, other Councillors and employees of the local authority. The Ombudsman responded to the concerns about the length of some investigations by pointing to the unavoidable delays resulting from the unavailability of witnesses and the need to gather evidence that had not been included as part of the initial complaint. He also reiterated his concern that too much of his organisation's time and limited resources is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation.

4.8 **The Adjudication Panel for Wales**

- 4.8.1 The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the practices that apply to the Panel. The Panel is a creature of statute created by the Local Government Act 2000 but since devolution the underpinning of the Panel's powers and processes result from a mixture of the LGA 2000 and a variety of Welsh Regulations, particularly The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 and The Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 (both amended). The Regulations were drafted by the Welsh Government, and it would be for Welsh Government to deliver any policy amendments. In addition, 'practice directions' need the approval of the First Minister and while it is for the President of the Panel to set out new procedures or changes for Appeal Tribunals, the First Minister must agree any changes. Presidential Guidance is a matter for President but it is not legally binding.

- 4.8.2 Restricted reporting orders

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically (this has been ignored by the press unless criminal proceedings have been taken, despite reminders by the Panel at Hearings). The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. It has led to the Panel attempting to deal with the problem through using its power to control its proceedings to impose anonymity for certain witnesses or third parties. This has not been comfortable as there is no express power to anonymise (the APW has used the European Convention of Human Rights to do this, which is consistent with the approach of Employment Tribunals before the legislation was changed to expressly permit such orders), and is not binding on anyone other than the parties or witnesses who appear before it. In addition, given the nature of the Panel's work and the inevitable interference with local democracy that can result from the imposition of sanctions, it would be better to be able to allow more openness about witnesses and to impose a Restricted Reporting Order. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

4.8.3 Anonymity of witnesses

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

4.8.4 Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally. This is seen to avoid delay with the Panel procedure and allow both the accused member and the Tribunal to obtain additional evidence easily.

4.8.5 Appeal Tribunal procedure

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. Service should be by first class post with deemed service rules in place and Panel should be given the express ability to anonymise witnesses. There is a grey area on the subject of witness summons – Case Tribunals expressly have the power to do this through the relevant Regulations but the Regulations for Appeal Tribunals say that the Panel President determines this with the consent of the First Minister. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

4.8.6 Case Tribunal procedure

The Panel President considers that the Regulations are outdated in several respects. Service should be by first class post with deemed service rules in place, the ability to anonymise witnesses is required, and there is a Regulation that says Hearings can only be postponed with seven days notice given to the accused member. The ability to have part public and part private hearings is not expressly permitted currently.

4.8.7 Permission to appeal procedure

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well – it only allows delegation of her power to another legal member if she is absent whereas she would prefer to have discretion about delegation, such as when the accused member is known to her, it requires her to make a decision within 21 days with an extension of time if further information is required but it is not clear from when the new deadline applies, and does not give the Public Services Ombudsman any opportunity to make submissions to the Panel. A Hearing is possible if there are special circumstances, but no extension of time is given to effectively allow this. The President proposes minor amendments to make the process more balanced and sensible.

4.8.8 Sentencing powers

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are:

- to disqualify the respondent from being, or becoming, a member of the relevant authority concerned or any other relevant authority for a period of up to five years
- to suspend or partially suspend the respondent from being a member or co-opted member of the relevant authority concerned for up to 12 months, or

- 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.

Monitoring Officers have confirmed that they would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.

4.8.9 Interim Case Tribunals

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high. This view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The fact is that the Ombudsman has never applied for such a Hearing. The process is lengthy and the LGA 2000 does not explain sufficiently what is required to deal with such hearings. The intention in the Act appears to be to allow an accused member to be suspended for six months (it is unclear whether this is one term of suspension or if it can be renewed on application) while the Ombudsman investigates if that Councillor through their role was interfering with the investigation or if for some other reason it was necessary to suspend on an interim basis. The issue has arisen several times where Councillors are being prosecuted for historic sex offences and there is a strong feeling from Monitoring Officers and Standards Committees that it is inappropriate to continue to remunerate a Councillor who is facing such charges, and that his or her continued activities as a Councillor could endanger members of the public, other Councillors or members of staff. A member who is charged with criminal offences is innocent until proven guilty, and in order for the Ombudsman to make an interim referral there would need to be strong evidence that it is in the public interest for a suspension to be imposed, particularly if the offences are historical. This could be met if, for example, there is evidence that the member represents a risk to the public at large or to a particular group in the locality. A neutral act of suspension akin to the practice in employment matters pending hearings taking place would provide some assurance to the public and to local authorities on the risk that the member concerned could reoffend or misuse their position/standing in the local community whilst being investigated or awaiting criminal trial. In addition, an Interim Case Tribunal would follow the same process as a full Case Tribunal, which means it would take at least three months to have a Hearing, and the Hearing would require a full Panel which would then present difficulties in constituting a new Panel for the final Hearing. There is no assistance in the legislation about how to manage such Hearings and 'public interest' is not defined. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with

the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

- a) if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;*
- b) and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;*
- and*
- c) and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'*

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5 Conclusions and recommendations

5.1 I welcomed the opportunity to lead this review and to collect the widest possible evidence

from those involved in the operation of the ethical standards framework about strengths and weakness of the current framework, how it might be improved and how the requirements of the recent legislation as it relates to ethical standards will be managed. The key question for all those I met with was - how can ethical standards in local government in Wales be enhanced, and on a practical point how can the number of complaints be reduced?

5.2 It was seen to be essential to ensure the local government family in Wales was fully involved in the review and informed the outcome. This involvement needed to be demonstrated as part of the outcome of this work. I have met with many of those individuals and representatives of organization most involved in delivering the ethical standards framework in Wales, and this report, its findings and its recommendations are largely based on the views and experience of those individuals and organisations.

5.3 The first phase of the review involved engagement with those individuals and representatives of organisations to establish views about the process and operation of the framework including details of where the framework works well and whether there are areas which could be improved. The outcome of this first phase builds on the positive elements of the framework while strengthening those areas where it is considered improvements could be made. Options to bring the requirements of the Register of Interests provisions in the Model Code of Conduct Order in line with the policy of the Act to stop Councillors' addresses being published have also been considered.

5.4 The following were required as key components of delivery:

- *An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances*
- *An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements*
- *Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.*
- *Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.*
- *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the*

approach to addressing concerns.

- *Consideration of the current sanctions and whether they are still appropriate*

5.5 This first stage of the review has covered each of these issues and my findings and recommendations for change below relate to the key components of delivery:

5.5.1 ***An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances***

I conducted an audit of the Codes of Conduct adopted by all the required authorities against the Model Code of Conduct to identify any local variances and to consider whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This included identification of areas where improvements could/should be made. The Monitoring Officers of all principal councils, National Parks Authorities and Fire and Rescue Authorities responded to my request for information about the Code of Conduct that had been adopted by their Authority and with only one exception (a county Council) the response was that the Model Code of Conduct had been adopted without significant variations or additions. However, a number of local authorities (over one half) have also adopted a local resolution procedure or protocol supplementary to the Model Code and over one half also have a mandatory training requirement again not as part of the Code itself but supplementary to it. In other authorities this is an expectation rather than being mandatory.

5.5.2 ***An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements***

All of those I met as part of this review consider that the ethical standards framework that applies in Wales is far superior to that currently used in English local government partly because unlike in England, the Code of Conduct applies both when a Councillor is acting in their official capacity and when a Councillor behaves in a way that could be regarded as bringing their office or their authority into disrepute, and partly because the separation of roles and responsibilities as described earlier in the Welsh framework provides a degree of genuine independence in the way that complaints are assessed and investigated. The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales.

However, there are concerns by the Public Services Ombudsman and Monitoring Officers about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code of Conduct for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code of Conduct being

significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.

5.5.3 Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements.

The consensus is that the current framework is fit for purpose, works well in practice and a number of those that I consulted proposed that *'if it ain't broke don't fix it'*. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate - and superior to the Code of Conduct used in English local government - and not in need of major revision.

However, I have proposed a number of amendments to the Model Code of Conduct in respect of:

- Paragraph 17 of the Model Code that requires members, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of their authority, provide written notification to the authority's Monitoring Officer, or in relation to a Community Council, to your authority's proper officer of the existence and nature of that gift, hospitality, material benefit or advantage. The Code does not specify any threshold for such declarations and a number of authorities have specified a threshold beyond which there must be a declaration. The threshold should be specified in the Code to ensure consistency across Wales.
- The law requiring the publication of the home addresses of Councillors has changed recently so Councils no longer do this. However, members are required to include their home address in their Council's Register of Interests. There is agreement that the Code of Conduct should not require Councillors to disclose their home address, and it is proposed that Paragraph 10.2.(vi) of the Model Code of Conduct should be amended to read:

'any land (other than the principal residence) in which you have a beneficial interest and which is in the area of your authority'
- A *'person'* is not defined either in the 2000 Local Government Act or in the Model Code of Conduct so the Public Services Ombudsman has had to rely in conducting his investigations on the definition in the Interpretation Act 1978 which is *'a body of persons corporate or unincorporate'*. This has caused problems, and it is considered that a clear definition of what is meant by a *'person'* on the face of the legislation or in the Model Code would be beneficial.
- There is concern that the provision in Paragraph 4a of the Model Code of Conduct which requires that a member must:

'carry out your duties and responsibilities 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'

does not include all protected characteristics. This provision should be extended to include all nine protected characteristics under the Equality Act 2010 – race, religion or belief, age, disability, sex (gender), sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity.

- The potential for breaches of the Code of Conduct as a result of the extensive and increasing use being made by elected members of a range of social media is a matter of concern. The helpful guidance on the use of social media by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Model Code of Conduct.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. In practice, most members have self-reported to the Public Services Ombudsman for possible breaches of the Code as a result of criminal conduct. However, there have been cases where this has not happened and the Code of Conduct should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

In addition to these proposed amendments to the Model Code of Conduct there are a number of other recommendations in respect of the current ethical standards framework in Wales:

- **Mandatory training on the Code of Conduct for all members of principal councils and community councils**

Every individual or organizational representative that I met proposed that initial training for all Councillors on the requirements of the Code of Conduct adopted by their authority should be mandatory, and that this initial training should be regularly 'refreshed'. The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members in Wales are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. The Local Government and Elections (Wales) Act 2021 includes a requirement for Community Councils to publish and keep under review a training plan for its members and officers. It is anticipated that such plans would include training on the Code of Conduct at appropriate intervals. If initial and refresher training on the Code is made mandatory for all councillors there

will need to be consideration of how that training can be resourced and delivered.

- **Increased use of local resolution of complaints**

Most principal Councils in Wales have adopted 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 effective at resolving many of these kinds of complaints, and there is a small number of Community Councils (around 70 of the 735 Town and Community Councils in Wales) that have adopted a similar procedure using the Model Local Resolution procedure developed for their use by One Voice Wales and the Public Services Ombudsman. Members may still complain directly to the Public Services Ombudsman about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), he is likely to refer the matter back to the principal authority's Monitoring Officer for consideration under this process. It is generally accepted that such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints. Consideration should be given to whether the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and to ensure that the Ombudsman's resources are devoted to the investigation of serious complaints.

- **Extended powers for the Public Services Ombudsman for Wales**

There is concern that the low number of referrals to Standards Committees as a proportion of the complaints received by the Ombudsman has had an adverse impact on the ability of Standards Committees to maintain public confidence in elected members, that complainants felt their concerns were not being taken seriously and that on occasion the member complained about felt exonerated and free to continue with the conduct that had been the subject of the complaint. Greater use of the Ombudsman's discretion for referral than is the case at present would be welcomed by Monitoring Officers and Chairs of Standards Committees. The Ombudsman is sympathetic to the view expressed by some of those I spoke with that his investigations take too much time and that too often quite serious complaints are simply not dealt with. He has expressed his concern that too much of his organisation's time is spent filtering complaints – over 400 in 2020/21 – the vast majority of which do not warrant investigation. In the Ombudsman's view local resolution of many of these low-level complaints is the key to making his work more focused and efficient, and the extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework.

- **Changes to the powers and processes of the Adjudication Panel for Wales**

The President of the Adjudication Panel for Wales has made a number of proposals for amendment both to the policies and the processes that apply to the work Panel.

- **Restricted reporting orders**

The Panel does not have the ability to control in any way the reporting by the press about any case, although the law about reporting of sexual offences applies automatically. The Public Services Ombudsman has reported that without an express legislative power enabling it to make such restricted reporting orders, some complainants have been unwilling to give statements or to make complaints, and there have been instances of third parties who were not even witnesses becoming the focus of press reporting and social media commentary. The Panel President considers that the powers available to an Employment Tribunal - an Employment Tribunal can impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order that can be in place forever - would be appropriate for all Panel Tribunals and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.

- **Anonymity of witnesses**

This is closely related to the issue of Restricted Reporting Orders. The Public Services Ombudsman has asked for a consistent approach to the anonymity of witnesses so his staff know the position when preparing reports and explaining the process to witnesses. The President considers it appropriate to issue presidential guidance to ensure consistency and transparency and will do so shortly, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning for such a step. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- **Disclosure**

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- **Appeal Tribunal procedure**

The Panel President intends to ask the First Minister, through the President of Welsh Tribunals, to approve amendments to the Appeal Tribunal procedure. The current Regulations also require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision if only to avoid further appeals. Despite this, the President is comfortable with the current position as it means the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- **Case Tribunal procedure**

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

- **Permission to appeal procedure**

In 2016 a new process for appeals was introduced, requiring permission to appeal to be sought from the President of the Panel. The President considers that this process does not work well and proposes minor amendments to make the process more balanced and sensible.

- **Sentencing powers**

Currently the powers available to the Panel when it determines that a member or co-opted member has failed to comply with the Code are limited and the President would like the Panel to have the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England. The Public Services Ombudsman and Monitoring Officers have confirmed their support for this.

- **Interim Case Tribunals**

The Public Services Ombudsman has the power under s72 of the LGA 2000 to make interim referrals to the Adjudication Panel for Wales if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. Both the Ombudsman and the Panel President consider that the threshold for meeting the legislative requirements for an interim referral to the Panel is too high, and this view is shared by many of the Monitoring Officers and others that I have met, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a

test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. The Hearing would be by a legal member sitting alone but with the ability to invite oral submission from the parties in the interests of justice. The Public Services Ombudsman would submit a referral to the President of the Panel with a report setting out the background and why an interim suspension was being sought. At the most, only six months suspension (partial or full) would be possible, and could be renewed up to three times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the Ombudsman's report would be taken at face value in the same way that the GMC's report is taken at face value at the Medical Practitioners' Tribunal. The test to be applied would be:

'Where it appears to the Interim Case Tribunal that:

a. if the matters outlined by the Ombudsman in the interim report are found by a Case Tribunal at a final hearing and would be likely to be found to constitute a failure to comply with the Code of Conduct of the relevant authority concerned;

b. and that the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the Local Government Act 2000;

and

c. and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the Ombudsman's investigation.'

This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

5.5.4 Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.

I was struck by the variation in the way that Standards Committees in Wales see their remit and at the different roles played by the Independent Chairs of Standards Committees. At the one extreme Standards Committees and their Independent Chairs

seem to have either been given or have adopted a very limited role, meeting infrequently and only really active when there is a Hearing of a case referred by the Public Services Ombudsman for Wales. At the other extreme there are Standards Committees and Chairs that see their remit much wider than this, and as leading the development and maintenance of the ethical standards framework in that local authority. In particular these Standards Committees and Chairs, along with the Monitoring Officer, act as a primary source of advice, support and guidance to the Town and Community Councils in their area. There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales, but accepting that 'one size does not fit all' and that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.

The Local Government and Elections (Wales) Act 2021 includes a number of provisions that will have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.

There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.

There is an established Forum for Independent Chairs of Standards Committees in north and mid Wales. Although a Forum for the Chairs of Standards Committees in South Wales no doubt would serve a similar purpose in the facilitation of exchange of information and experiences about the work of Standards Committees in that part of Wales, I suggest that there should be an all-Wales Forum and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees across Wales that took place until recently that would encourage consistency of approach and the adoption of best practice across Wales.

The Public Services Ombudsman for Wales accepts that there is a need for more reference back to Standards Committees when he declines to investigate complaints, and that although the technicalities of how references back are managed needs careful consideration he does not believe this to be complicated. The Ombudsman considers that this informal arrangement would not require any legislative change as far as his powers are concerned but that Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. His clear view is that the power for the Standards Committee to impose training or to require an apology to be made would be helpful to '*nip things in the bud*' at a local level.

I reviewed whether the establishment of sub-committees of Standards Committees dedicated to Community Council issues has had any impact on the process of supporting Community Councils and dealing with complaints. From my audit of Standards Committees it seems that only one County Council in Wales has established such a subcommittee of the Standards Committee and as that County Council has 128 Community Councils in its area this is seen to be a practical way of managing the situation.

There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. The Public Services Ombudsman takes seriously any allegation that a member has bullied or harassed another member or officer and his guidance on this makes it clear that members must show other members and officers the same courtesy and consideration that they show others in their daily lives. In seeking to reduce the incidence of bullying or otherwise inappropriate behaviour, with the assistance of Monitoring Officers, the Ombudsman has engaged with a number of Town and Community Councils that have given rise to a disproportionate number of complaints in the past, and guidance prepared by One Voice Wales and the Society of Local Council Clerks aims to help Councils in avoiding or tackling bullying, harassment and inappropriate behaviour. This is an issue that may be mitigated to some extent by a requirement for mandatory training of councillors and greater use of local resolution procedures, but it is a serious problem that will continue to need to be monitored and addressed where necessary by local Standards Committees and Monitoring Officers

5.5.5 *An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns.*

The review has been very useful in indicating where there is the need for changes to the current arrangements to support members and staff – principally Standards Committees and Monitoring Officers – in preventing issues arising and needing being dealt with more effectively in a timely way without the need for investigation by the Public Services Ombudsman. The recommendations for changes to the current ethical standards framework are intended to assist in achieving that objective.

5.5.6 *Consideration of the current sanctions and whether they are still appropriate*

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

or

- the member or co-opted member should be suspended or partially suspended from being a member of that authority for a period not exceeding six months or if shorter, the remainder of the member's term of office.

A member subject to a sanction by a Standards Committee may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination.

There was no view expressed during my review that these sanctions available to a Standards Committee are not proportionate or appropriate. However, the Public Services Ombudsman and Monitoring Officers confirmed their support for the Adjudication Panel for Wales having the ability to impose more varied sanctions than is currently the case. The proposal is that the sanctions should be similar to those available to the former Adjudication Panel for England.

5.5.7 Accessibility of the ethical standards framework

Although this was not an issue raised by any of those that I consulted there is nevertheless a concern that the ability of a member of the public to make a legitimate complaint about the conduct of an elected member in their area is constrained by the lack of publicity about the ethical standards framework and how the complaints procedure can be utilised. There is very helpful information and advice on the websites of the Public Services Ombudsman, the WLGA and One Voice Wales. However, based on my own experience of searching principal Council websites as well as the Welsh Government website for information about the Code of Conduct, or the work of Standards Committees or how to complain about the conduct of a councillor, a member of the public would have great difficulty in finding helpful information if they wished to complain. And of course not every member of the public has internet access, and some members of the public have particular difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group' such as the traveler community or because of language problems. I have no practical recommendation about how this should be addressed but if the ethical standards framework is to be genuinely open, transparent and accessible to everyone, and if the objective is that the framework should command the confidence of everyone who may need to use it, then consideration needs to be given to how to ensure equality of access for everyone.

- 5.6 The second phase of the review will focus on working with partners and stakeholders to deliver any changes to the ethical standards framework that are considered appropriate and necessary by Welsh Ministers in the light of the findings and recommendations of the first phase of the review.

Richard Penn

Independent Consultant

July 2021

REPORT'S KEY FINDINGS

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances</i></p> | <p>With only one exception (a County Council) the Model Code of Conduct has been adopted without significant variations or additions. However, over one half have adopted a local resolution procedure or protocol supplementary to the Model Code, and over one half also have a mandatory training requirement, again not as part of the Code itself but supplementary to it. In the other authorities this is an expectation rather than being mandatory.</p> |
| <p><i>An analysis of the effectiveness of the framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements</i></p> | <p>The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. However, there are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Adjustments and amendments to the current framework requiring mandatory training on the Code for all members and the greater use of local resolution procedures should result in the number of the mostly low level complaints that are made and the need for formal investigations that are required into allegations that there has been a breach of the Code being significantly reduced, and this would result in the already high ethical standards in Welsh local government being further enhanced.</p> |
| <p><i>Consideration of whether the framework is still fit for purpose, including whether the ten principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This will include identification of areas where improvements could/should be made to the current arrangements</i></p> | <p>The consensus is that the current framework is fit for purpose and works well in practice. The ten principles of conduct are seen as relevant and the Model Code of Conduct is seen as generally appropriate and not in need of major revision.</p> |

A number of the following recommendations would need to be implemented by way of Secondary Legislation or through Primary Legislation i.e. an Act.

- The Code does not specify any threshold for declarations of any gift, hospitality, material benefit or advantage. The threshold should be specified in the Code to ensure consistency across Wales.
- Members are required to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.
- A 'person' is not defined either in the 2000 Local Government Act or in the Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Code would be beneficial.
- Paragraph 4a of the Code which requires that a member must:

'carry out your duties and responsibilities 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'

does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.
- The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.
- 6(1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

| | |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Mandatory training on the Code of Conduct for all members of principal councils and community councils</p> | <ul style="list-style-type: none"> • The simplest way to achieve universal mandatory training would be to include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 before they can act as a Councillor, in the same way that they are currently required to undertake to observe the Code of Conduct adopted by their authority. It may require legislation to amend the 2004 Order appropriately. • The Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman. The consensus is that combined with mandatory training on the Code of Conduct for all Councillors this would speed up the complaints process and ensure that the Ombudsman’s resources are devoted to the investigation of serious complaints. • Extended powers for the Public Services Ombudsman for Wales • Greater use of the Ombudsman’s discretion for referral would be welcomed by Monitoring Officers and Chairs of Standards Committees. The extension of his power to refer complaints back for local resolution would be a beneficial change to the current framework. |
| <p>Changes to the powers and processes of the Adjudication Panel for Wales</p> | <ul style="list-style-type: none"> • Restricted reporting orders <p>The Panel cannot control the reporting by the press about any case. The Panel President considers that the powers available to an Employment Tribunal - to impose a Restricted Reporting Order either until the end of proceedings or an extended Restricted Reporting Order - would be appropriate for all Panel Tribunals, and could be introduced either through legislation for all Welsh tribunals following the recent Law Commission Report or specifically for the Adjudication Panel for Wales.</p> |

- Anonymity of witnesses

The President can issue guidance to ensure consistency and transparency, but an express power to anonymise would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning. It is in the President's remit to add this power for Appeal Tribunals, but fresh legislation would be required for Case Tribunals.

- Disclosure

There is an issue about the disclosure of the unused material held by the Public Services Ombudsman and Monitoring Officers. It has been agreed to amend the Ombudsman's own process in this regard, with Presidential guidance/practice direction on both disclosure and the role of the Monitoring Officer generally.

- Appeal Tribunal procedure

The Panel President intends to ask for amendments to the Appeal Tribunal procedure. The current Regulations require the Standards Committee to consider the Panel decision on the Appeal if it is different to the original decision. This is unpopular with Standards Committees as they feel bound by the Panel decision. The President is content with this as the Standards Committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

- Case Tribunal procedure

The Panel President considers that the Regulations are outdated and has proposed a number of amendments to make the Case Tribunal Procedure more efficient and fairer to witnesses.

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> • Permission to appeal procedure <p>Permission to appeal has to be sought from the President of the Panel. The President proposes minor amendments to make the process more balanced and sensible.</p> <ul style="list-style-type: none"> • Sentencing powers <p>The powers available to the Panel are limited and the President would like the ability to impose more varied sanctions as was the case with the former Adjudication Panel for England.</p> <ul style="list-style-type: none"> • Interim Case Tribunals <p>The Public Services Ombudsman has the power to make interim referrals to the Panel if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the Code of Conduct, the nature of which is likely to lead to disqualification. The threshold for meeting the legislative requirements for an interim referral is considered to be too high, but any change to these powers would require primary legislation by the Welsh Government. The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test, but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.</p> |
| <p><i>Consideration of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints.</i></p> | <ul style="list-style-type: none"> • There is a need for consistency of approach and for the remit of the Standards Committee to be generally similar across Wales but that there is a need for the local Standards Committee to reflect the specifics of the situation for the principal council concerned. The Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council. |

- The Local Government and Elections (Wales) Act 2021 includes a number of provisions that have implications for the work of Standards Committees which will be expected to support the political leadership of the Council in maintaining high standards of conduct by the members of their group and to make an annual report to the authority on the discharge of its functions, its assessment of standards of conduct within the authority and any recommendations for improving standards.
- There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings to ensure openness and fairness to the member complained of, to the complainant and to any witnesses.
- There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees that would encourage consistency of approach and the adoption of best practice across Wales.
- The Public Services Ombudsman for Wales accepts the need for more reference back to Standards Committees when he declines to investigate complaints. Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.
- There is serious concern about the extent of bullying, lack of respect or otherwise generally disruptive behaviour by some members at meetings of Town and Community Councils. This is an issue that may be mitigated by a requirement for mandatory training of councillors and greater use of local resolution procedures, and guidance prepared by One Voice Wales and the Society of Local Council Clerks has been helpful in assisting Councils to avoid or tackle such behaviour, but it continues to be a serious problem.

| | |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none">• An analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place and b) be escalated beyond local resolution. This will include areas such as clear communication and signposting, training and awareness and the approach to addressing concerns• No view was expressed on whether the current sanctions open to Standards Committees are still appropriate• Accessibility of the ethical standards framework - the report believes that the lack of publicity about the ethical standards framework constrains use of the process, especially if the person wishing to complain if they do not have internet access, or have difficulty in accessing information because of various disabilities, or because they belong to a 'hard to reach group', or because of language problems. |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

This page is intentionally left blank



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 NOVEMBER 2021

MEMORANDUM OF UNDERSTANDING

REPORT OF THE SERVICE DIRECTOR, DEMOCRATIC SERVICES & COMMUNICATION.

1. PURPOSE OF REPORT

The purpose of the report is to provide Members with a draft Memorandum of Understanding for Members comment and feedback to the Democratic Services Committee before its presentation to full Council.

2. RECOMMENDATIONS

2.1 It is recommended that Members:

- (i) Consider and comment on the draft 'Memorandum of Understanding' attached as appendix A and to agree for this to be reported back to the Democratic Services Committee, before endorsement by full Council.

3. BACKGROUND

- 3.1 The statutory framework for the conduct of Members is set under Part 3 of the Local Government Act 2000. Under powers granted in the Act, the National Assembly for Wales (now Senedd Cymru) made an order specifying principles governing the conduct of Members ('the Principles of Conduct' SI 2001/2276); and issued a model code regarding the conduct expected of Members, reflecting the Principles of Conduct. The model statutory code has been adopted by Rhondda Cynon Taf County Borough Council, without variation, and is enshrined, as the Members' Code of Conduct, within the Council's Constitution. Members must comply with the duties set out in the Members' Code of Conduct. Sanctions may be imposed on any Member found to be in breach of the Code.
- 3.2 The Democratic Services Committee have proactively been undertaking work to promote and encourage diversity in democracy through the Diversity in Democracy Working Group.

- 3.3 At the meeting of the Democratic Services Committee on the [10th May](#) Members received and supported the interim report of the Diversity in Democracy working group and its resulting recommendations.
- 3.4 Due to the importance of the work of the group and its links with the work of the WLGA in respect of 'Council's Diversity Pledges' the interim report was presented to Council for further endorsement and to raise the profile of the work undertaken.
- 3.5 Members of the Council endorsed the 16 recommendations outlined by the working group and also committed to becoming a Diverse Council.

4 MEMORANDUM OF UNDERSTANDING

- 4.1 Within its interim report, the working group took forward a recommendation in respect of the creation of a 'Memorandum of Understanding'
"To consider introducing a 'statement of understanding' for Members outlining their duties as a Councillor including the need to have mutual respect within the Council Chamber."
- 4.2 The intended outcome of the statement would be a demonstration of mutual respect to other people with varying political opinions and a show of working together for the benefit of its communities.
- 4.3 A draft Memorandum was presented to the Democratic Services Committee on the 27th September, to which Members agreed for its presentation to the Council's Standards Committee for further comment and feedback.
- 4.4 The Draft Memorandum is attached at appendix A for Committee Members' comments. The Memorandum would provide an opportunity for Members to publicly commit to using their term of office to work for the Council, the County Borough and its citizens, and to commit to the standards of conduct expected by the Council. Its considered its adoption would strengthen standards and ethical arrangements within the Council and would support and sit alongside the Council's Code of Conduct for Members, the Standards of Conduct Expected By Members Local Resolution Policy and Member-Officer Protocol.
- 4.5 Following comments from the Standards Committee the draft will be presented back to the Democratic Services Committee for final consideration before presentation to Council.

5 EQUALITY AND DIVERSITY IMPLICATIONS / SOCIO-ECONOMIC DUTY

- 5.1 The work of the Democratic Services Committee Diversity working group looks to improve the equality and diversity across the County Borough and within the local democracy setting. The more representative of society and diverse our Councillors are the better understanding they will have of the needs of the local community and therefore are better equipped at carrying out their duties and responsibilities

8 WELSH LANGUAGE IMPLICATIONS

- 8.1 Encouraging diversity within democracy includes promotion of all languages. The Council has positively promoted and supported bilingual engagement at Council meetings and provision of Committee materials.

9 CONSULTATION

- 9.1 Diversity in Democracy Working Group.
- 9.2 Democratic Services Committee – 27th September 2021

10. FINANCIAL IMPLICATION(S)

- 10.1 None

9. LEGAL IMPLICATIONS

- 9.1 The Local Government and Elections (Wales) Act 2021 outlines a number of duties placed on Local Authorities in respect of the diversity agenda.

10. LINKS TO CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT.

- 10.1 The work of a Councillor is fundamental to the Council's Corporate plan, as Councillors are the mouthpiece for the communities that they serve.
- 10.2 Ensuring that there are greater opportunities for a more diverse democracy across RCT links to the Wellbeing of Future Generations goals of a more equal Wales and a Wales of cohesive communities

11 CONCLUSION

- 11.1 Trying to achieve a diverse culture is challenging and the Democratic Services Committee working group have, in a short period of time, already identified potential barriers that may dissuade members of the public to stand as a candidate for election.
- 11.2 As a Council we need to ensure that any perceived barriers are eradicated and instead celebrate and promote the rewarding experiences of becoming a Councillor.
- 11.3 Ensuring Members have a clear understanding of their roles and behaviour in and outside of the Council Chamber is paramount to ensuring a safe and inclusive working environment for all.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

**REPORT OF THE SERVICE DIRECTOR, DEMOCRATIC SERVICES &
COMMUNICATION**

MEMORANDUM OF UNDERSTANDING

Democratic Services Working Group – 27th September 2021

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding should be considered in conjunction with the Members' Code of Conduct and forms part of the ethical code which binds all Members of Rhondda Cynon Taf County Borough Council.

As an Elected Member of Rhondda Cynon Taf Council I agree to:

1. Represent the people of Rhondda Cynon Taf equally and without discrimination. I will show respect at all times and consideration for others and not use bullyingⁱ language or behaviour towards others.
2. Acknowledge all issues that are brought to my attention by residents of the County Borough and act appropriately and timely following receipt of such information, ensuring I act in the best interests of the residents and the Council as a whole.
3. Ensure that the Council's resources are used both lawfully and prudently, when discharging my duties and responsibilities.
4. Undertake my role in a professional manner whether in a physical or virtual setting when representing the Council and the residents that I serve.
5. Undertake my role and the duties aligned in a safe manner, ensuring the safety of myself, colleagues and residents whether through a physical or virtual setting.
6. Promote civility online through any digital engagement and social media platforms that I utilise, providing a clear statement of intent as to engagement through a civil and open manner.
7. Abide by the Council's Constitution, Rules of Procedure and Council policies and procedures as advised upon during my term of office.
8. Have regard to the contributions made by colleagues, officers and public speakers during Council meetings, demonstrating mutual respect regardless of political opinions and positively demonstrating a show of working together for the benefit of the communities within the County Borough.
9. Safeguard and promote the life chances of children looked after by the Council and diligently discharge my responsibilities as Corporate parent of those children, Safeguarding both Vulnerable Children and Adults.
10. Act according to the highest standards of probity in carrying out my various duties as a Councillor
11. Adhere to and respect the Members' Code of Conduct and have proper regard to the advice and guidance issued by the Council's Standards Committee, including adherence to the provisions of any Local Resolution Protocol proposed by the Council's Standards Committee.

12. Support and promote the conduct of the Council's business being carried out in an open and transparent manner and ensure that information provided to me in a confidential setting is not disclosed and made available in the public domain.
13. Promote and support these commitments by leadership and by example and act in a way that secures or preserves public confidence
14. Proactively take forward the training opportunities provided to me, including all training which has been identified as mandatory in the Member Development Programme, or equivalent, to equip me to carry out my duties as a Councillor.

ⁱ 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. 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.