



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

**GWŶS I GYFARFOD O'R CYNGOR**

C.Hanagan  
Cyfarwyddwr Gwasanaeth y Gwasanaethau Democrataidd a Chyfathrebu  
Cyngor Bwrdeistref Sirol Rhondda Cynon Taf  
Y Pafiliynau  
Parc Hen Lofa'r Cambrian  
Cwm Clydach CF40 2XX

Dolen gyswllt: Marc Jones - Swyddog Gwasanaethau Democrataidd (07385 401845)

**DYMA WŶS I CHI** i gyfarfod hybrid o'r **PWYLLGOR SAFONAU** yn cael ei gynnal ar **DYDD GWENER, 18FED TACHWEDD, 2022** am **10.00 AM**.

Caiff Aelodau nad ydyn nhw'n aelodau o'r pwyllgor ac aelodau o'r cyhoedd gyfrannu yn y cyfarfod ar faterion y cyfarfod er bydd y cais yn ôl doethineb y Cadeirydd. Gofynnwn i chi roi gwybod i Wasanaethau Democrataidd erbyn Dydd Mercher, 16 Tachwedd 2022 trwy ddefnyddio'r manylion cyswllt uchod, gan gynnwys rhoi gwybod a fyddwch chi'n siarad Cymraeg neu Saesneg.

**AGENDA**

**Tudalennau**

**1. DATGAN BUDDIANT**

Derbyn datganiadau o fuddiannau personol gan Gyngorwyr, yn unol â gofynion Cod Ymddygiad y Cyngor.

Nodwch:

1. Mae gofyn i Aelodau ddatgan rhif a phwnc yr agendwm mae eu buddiant yn ymwneud ag ef a mynegi natur y buddiant personol hwnnw; a
2. Lle bo Aelodau'n ymneilltuo o'r cyfarfod o ganlyniad i ddatgelu buddiant sy'n rhagfarnu, rhaid iddyn nhw roi gwybod i'r Cadeirydd pan fyddan nhw'n gadael.

**2. ETHOL CADEIRYDD**

Ethol Cadeirydd y Pwyllgor yma ar gyfer Blwyddyn 2022/2023 y Cyngor.

**3. ETHOL IS-GADEIRYDD**

Ethol Is-gadeirydd y Pwyllgor yma ar gyfer Blwyddyn 2022/2023 y Cyngor.

**4. COFNODION**

Cadarnhau cofnodion o'r cyfarfod a gafodd ei gynnal ar 16 Mawrth 2022 yn rhai cywir.

5 - 12

**ADRODDIAD Y SWYDDOG MONITRO**

**5. RHAGLEN WAITH Y PWYLLGOR SAFONAU AR GYFER 2022 - 2023**

Trafod rhaglen waith ddrafft y Pwyllgor ar gyfer Blwyddyn y Cyngor 2022 -2023.

13 - 22

**6. DIWEDDARIAD AR LAFAR - HYFFORDDIANT COD YMDDYGIAD**

**7. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU - CRYNODEB O GWYNION 2022**

Crynodeb o gwynion yn erbyn Aelodau o 1 Mawrth 2022 – 31 Hydref 2022.

23 - 26

**8. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU - LLYTHYR AC ADRODDIAD BLYNYDDOL 2021-2022**

Rhoi crynodeb i'r Aelodau o'r materion sy'n ymwneud â'r Cod Ymarfer sydd wedi'u hamlinellu yn Llythyr ac Adroddiad Blynyddol yr Ombwdsmon i'r Cyngor yma ar gyfer 2021 – 22.

27 - 54

**9. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU - CANLYNIADAU YMCHWILIAD DIWEDDAR - 'EIN CANFYDDIADAU'**

Trafod y crynodeb o ganlyniadau'r ymchwiliad mewn perthynas ag achosion honedig o dorri'r Cod Ymddygiad i Aelodau fel y cyhoeddwyd gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru ar gyfer y cyfnod rhwng 1 Ebrill 2021 a 31 Hydref 2022.

55 - 92

**10. PANEL DYFARNU CYMRU - PENDERFYNIADAU DIWEDDAR Y TWIBIWNLYS**

Derbyn gwybodaeth mewn perthynas â phenderfyniadau diweddar y Panel Dyfarnu.

93 - 126

**11. CEISIADAU AM OLLYNGIAD**

Trafod un chais am ollyngiadau wedi'u cyflwyno'n unol â Rheoliadau'r Pwyllgorau Safonau (Caniatáu Gollyngiadau) (Cymru) 2001.

**12. DYLETSSWYDDAU ARWEINWYR Y GRWPIAU MEWN PERTHYNAS  
Â SAFONAU YMDDYGIAD**

Trafod y trefniadau sydd i'w rhoi ar waith er mwyn cydymffurfio â dyletswyddau newydd arweinwyr grwpiau gwleidyddol mewn perthynas â safonau ymddygiad a dyletswyddau newydd cyfatebol ar bwyllgorau safonau (a gafodd eu cyflwyno gan Ran 4 o Ddeddf Llywodraeth Leol ac Etholiadau (Cymru) 2021, ('Deddf 2021').

131 - 158

**13. DIWEDDARIAD AR LAFAR - LLYTHYR OMBWDSMON  
GWASANAETHAU CYHOEDDUS CYMRU AT GADEIRYDDION  
PWYLLGORAU SAFONAU A CHANLLAWIAU DIWEDDARAF YR  
OMBWDSMON**

159 - 316

**14. FFORWM CENEDLAETHOL AR GYFER CADEIRYDDION AC IS-  
GADEIRYDDION PWYLLGORAU SAFONAU**

Ceisio barn Aelodau ar y cynnig yma.

317 - 322

**15. BUSNES BRYS**

Trafod unrhyw faterion sydd, yn ôl doethineb y Cadeirydd, yn faterion brys yng ngoleuni amgylchiadau arbennig.

**Cyfarwyddwr Gwasanaeth y Gwasanaethau Democraidd a Chyfathrebu  
Cylchreliad:-**

**Aelodau Annibynnol** –D Bowen, J.Thomas a H. John

**Y Cynghorwyr Bwrdeistref Sirol:**

Y Cynghorydd A Ellis a Y Cynghorydd G Hughes

**Y Cynghorydd Cymuned L. Law**

**(Aelod wrth gefn o'r Cyngor Cymuned: C A Thomas)**

Mr C.Jones, Swyddog Monitro

Mr A.Wilkins, Dirprwy Swyddog Monitro

Mr C Hanagan, Cyfarwyddwr Materion Cyfathrebu a Phennaeth Dros Dro'r  
Gwasanaethau Llywodraethol

Tudalen wag





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

Minutes of the virtual meeting of the Standards Committee held on Wednesday, 16 March 2022 at 10.00 am.

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

Mr M Jehu MBE (Chair)  
Councillor E Webster Mr R. Butler  
Mr D. Bowen Mr J. Thomas  
Community Councillor C. Willis  
(Reserve Member)

### **Officers in attendance**

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

#### **10 WELCOME AND APOLOGY**

The Chair welcomed Committee Members, Officers and Observers to the hybrid meeting of the Standards Committee and an apology for absence was received from Reserve Community Borough Councillor M. Forey.

#### **11 DECLARATION OF INTEREST**

In accordance with the Council's Code of Conduct, there were no declarations made pertaining to the agenda.

#### **12 MINUTES**

It was **RESOLVED** to approve the minutes of the 19<sup>th</sup> November 2021 as an accurate reflection of the meeting.

#### **13 MATTERS ARISING**

Page 13 of the minutes – The Monitoring Officer reported that the Memorandum of Understanding was agreed by Full Council following the previous meeting of the Standards Committee and has now been adopted.

#### **14 PUBLIC SERVICES OMBUDSMAN FOR WALES - CODE OF CONDUCT CASEBOOKS**

In his report, the Monitoring Officer provided the Committee with Code of

Conduct Casebook (Issues 25) produced by the Public Services Ombudsman for Wales.

Members noted that it appeared that the Ombudsman has reverted back to quarterly publication of the casebook following the previously published casebook which covered the whole of 2020.

The Monitoring Officer drew Member's attention to a case referred to Powys Standards Committee which resulted in the maximum sanction of 6 months suspension being imposed. Furthermore, this was based on findings of breaches of paragraphs 4(b) and 4(c) as the Member failed to show respect and consideration, and used bullying behaviour, towards members of the public who attended a meeting, and also that the Members actions at the relevant meeting could reasonably be regarded as behaviour which might bring the office of member or the Council into disrepute and a breach of paragraph (6(1)(a) of the Code of Conduct. Moreover, the second case referenced in the casebook resulted in an appeal to the Adjudication Panel for Wales against the determination and sanction imposed by Wrexham Standards Committee.

Members were reminded that the details of the case in the casebook referred to the APW for determination in respect of the Member from Caerphilly County Borough Council was considered and discussed at our previous meeting.

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

- 1 To note the information contained within the report.

## **15 PUBLIC SERVICES OMBUDSMAN FOR WALES - SUMMARY OF COMPLAINTS - 01.11.2021 - 28.02.2022**

The Monitoring Officer provided the Standards Committee with a summary of complaints made against Members and submitted to the Public Services Ombudsman for Wales (the 'Ombudsman') for the period 1<sup>st</sup> November 2021 – 28<sup>th</sup> February 2022, and as agreed at the previous committee Members resolved to receive this report quarterly rather than annually so that any issues arising can be considered and acted upon in a more timely fashion.

Members learned that only one complaint had been submitted to the Ombudsman during the period. Furthermore, Members were reminded that in determining whether to investigate a breach of the Code of Conduct, the Ombudsman initially applies a two-stage test, whereby at the first stage, he will aim to establish whether there is direct evidence that a breach of the Code has occurred and 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.

The Monitoring Officer provided the detail of an anonymised complaint made against a Member and submitted to the Ombudsman during this reporting period and reported that the complaint did not result in an investigation. However, the complaint concerned a posting on social media. Furthermore, whilst, the Ombudsman considered that the post was offensive they did not consider that it was so inflammatory, violent or shocking that it could amount to a breach of the Code and outlined that it is not the purpose of the Code to inhibit free speech and the robust expression of political differences. The post referred to highly publicised incidents regarding a group of individuals and also the individuals which the post were directed towards were all senior politicians and as such the Ombudsman stated they would be expected to have an exceptionally thick skin.

In response to a query raised in respect of the content of the learning issues received by the Committee and whether these would be conveyed to any potential new Members of the Committee coming the Elections in May, the Monitoring Officer reported that the Ombudsman had recently updated the Code of Conduct and training on this would be provided as part of the induction process.

The Standards Committee **RESOLVED:**

- 1 To note the content of the report.

## 16 **ADJUDICATION PANEL FOR WALES - RECENT TRIBUNAL DECISIONS**

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

Members were referred to the appendices of the report, which detailed a number of APW decision notices, that had been issued following the conclusion of the cases. Of particular interest to the Committee was the case detailed at Appendix 1 of the report, which showed the scrutiny of a decision made by a Standards Committee.

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

Members discussed how there is a need to take a more active approach in dealing with such cases in the future and that it is paramount that the Community Council's take the importance of their employees more seriously as there are consequences if they fail to take appropriate action. Furthermore, Members felt that the importance of Community Council training should be stressed and made mandatory to those Councillors who are newly elected in the future.

The Standards Committee **RESOLVED:**

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

## **17 FEEDBACK FROM THE 2022 ALL WALES STANDARDS CONFERENCE**

The Monitoring Officer provided Members with a copy of Richards Penn's report, commissioned by Welsh Government, in respect of his review of the Ethical Standards Framework in Wales and afforded Members of the Standards Committee the opportunity to provide feedback and discuss the recent All Wales Standards Conference, which was held virtually on 9<sup>th</sup> February 2022 which was heavily focussed on the findings of the Penn review.

Members learned that the reports findings fall into categories based on whether they would need legislation to implement. Moreover, 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.

The Monitoring Officer reported that Welsh Government are currently considering the recommendations to amend the Model Code of Conduct in the short term and medium to longer term. In addition, a further update was provided by Welsh Government representatives at the Standards Conference as to potential developments in this area.

The Standards Committee found the All Wales Standards Conference to be interesting and felt that their contributions were well received.

The Standards Committee **RESOLVED:**

1. To feedback comments on the All Wales Standards Conference.

## 18 NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS AND VICE-CHAIRS

The Monitoring Officer provided the Standards Committee with details of the report which seeks Members views on establishing a National Forum for Standards Committee Chairs and Vice-Chairs, a recommendation emanating from the Penn Review into the Ethical and Standards Framework in Wales.

The Monitoring Officer drew Member's attention to Mr Penn's report, which says he 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. Also, 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. Furthermore, 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.

Members learned that Mr Penn went on to comment positively upon the work of the forum for Chairs of Standards Committees in North and Mid Wales, and whilst acknowledging the place for local decision making, he recommends that a national forum be established along the same lines. Furthermore, a discussion around this recommendation took place at the All Wales Standards Conference. Monitoring Officers in Wales have agreed to consult their Standards Committees on the issue.

The Standards Committee **RESOLVED:**

1. To support the creation of an All Wales forum for Standards Committee Chairs and Vice Chairs.

## 19 LOCAL GOVERNMENT AND ELECTIONS (WALES) ACT 2021 - STANDARDS OF CONDUCT STATUTORY GUIDANCE

The Monitoring Officer provided the Standards Committee with the report which is to seek Members feedback on the consultation initiated by Welsh Government in relation to draft statutory guidance relating to the new duties in the Local Government and Elections (Wales) Act 2021 concerning standards of conduct, and agree a response to be submitted in response to that consultation.

Members were reminded that the 2021 Act requires leaders of political groups to take steps to promote and maintain high standards of conduct by members of their groups, and to co-operate with standards committees (to take effect from May 2022). Furthermore, it requires standards committees to produce annual reports on the exercise of their functions (due to take effect after, and in relation to, the financial year 2022/23) and

consolidates provision about investigations by the Public Services Ombudsman for Wales into the conduct of members of local government.

Members learned that the Welsh Government consultation document recognises that Councils must be places where an open culture thrives and people are made to feel welcome and respected, whatever their background, in order to encourage a more diverse range of people to seek elected office in local government. Standards of behaviour are key to this, and all members have a responsibility to act in a manner which respects and values all people.

The Monitoring Officer reported that the Minister for Finance and Local Government has acknowledged that the duty is not intended to be the panacea and will not cover everyone (particularly those members who do not belong to a group), but it is designed to be proportionate and helpful. Its aim is to prevent or stop inappropriate behaviour before it escalates into a breach of the Code of Conduct. Also, the Guidance emphasises that the duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise. Furthermore, the draft guidance also sets out a series of reasonable steps the group leader may undertake to ensure compliance with the duty.

The Monitoring Officer explained that the group leader has a significant role to play in creating a culture of trust and mutual respect in their group, and where issues arise, the importance of resolving low-level complaints at a local level has been raised by the Ombudsman and the independent Review of the Framework. Typically, these complaints are about alleged failures to show respect and consideration for others and the making of frivolous and low level complaints. Also, the group leader should be pivotal in preventing the escalation of these complaints to the stage where more formal interventions become necessary. Furthermore, leaders of political groups should have informal discussions with members who may be showing early signs of inappropriate behaviour to 'nip this in the bud' before it becomes problematic or in danger of breaching the Code. This may include suggesting and requesting training for the members concerned, asking for social media posts to be removed, and requesting apologies where appropriate.

The Monitoring Officer continued to explain that it is essential the leaders of a political group co-operate, and ensure the members within their group co-operate, with the monitoring officer and standards committee when an issue is referred to the standards committee. Also, group leaders should also report compliance with their duty to the standards committee, whereby this can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Moreover, group leaders should also report any serious

concerns about members' behaviour which have not been remedied by informal actions, in line with the requirement in the Code for Councillors to report breaches.

The Committee were informed that if a member is found by the standards committee to be in breach of the Code of Conduct and is disciplined by the committee, the leader of the political group must support the action. Also, a council's political group leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. In addition, the standards committee should then consider each report and provide feedback to the group leaders.

The Monitoring Officer reported that a Standards Committee must also provide advice and training, or arrange to train group leaders on the new duty, whereby, at the start of each administration this should take place within six months of the election and be reviewed at least annually. Also, the Standards Committee chair may wish to meet with group leaders periodically to review behaviour.

Members learned that Section 63 of the 2021 Act inserts a new section 56B into the 2000 Act which places a requirement on standards committees in each "relevant authority" to make an annual report to the authority concerned, whereby the guidance sets out, as a minimum, what the report should include.

The Committee were advised to provide any feedback in response to the consultation to the Monitoring Officer so that he is able to collate their responses. Furthermore, the Monitoring Officer suggested that we consult with the group leaders to also gauge their views on this and report back to Committee before agreeing a response to Welsh Government, to which Members were in agreement with.

The Standards Committee **RESOLVED:**

1. To consider the contents of the report and Welsh Government consultation document, which contains draft statutory guidance relating to the new duties in the Local Government and Elections (Wales) Act 2021 concerning standards of conduct.
2. Provide feedback in response to that consultation, noting the series of questions asked within the consultation document, and agree a response based on Members' feedback be submitted to Welsh Government on behalf of the Standards Committee.
3. Consult with the group leaders to gauge their views on the consultation.

## **20 URGENT BUSINESS**

Before closing the meeting, the Chairman informed Members that this would be the last meeting of the Standards Committee that he would attend due to his term of office coming to an end in October 2022 and

wished the Committee every success in the future. Furthermore, he informed Members that it was also be Councillor Ray Butler's last meeting as he's not re-standing coming the elections in May 2022.

The Chairman wished to place on record his personal thanks to Councillor Butler for all his hard work and professional commitment to the Standards Committee over his many years of service.

Members endorsed the Chairman's comments and wished him all the very best of health and success in the future.

**This meeting closed at 11.12 am**

**MR. M. JEHU  
CHAIR.**





## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**18<sup>th</sup> NOVEMBER 2022**

#### **STANDARDS COMMITTEE WORK PROGRAMME**

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

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

The purpose of the report is to review the Committee's Work Programme and agree items for consideration by the Standards Committee during the Municipal Year 2022-2023.

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

- 2.1 Subject to any amendments Committee Members' may have it is recommended the Work Programme for the Municipal Year 2022-2023, as set out in Appendix 2 to the report, be adopted.

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

- 3.1 The Standards Committee's Terms of Reference, as detailed in Appendix 1 to this report, 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.
- 3.2 To enable the Committee to fulfil its role an annual work programme is developed. The Committee is asked to give consideration to standard monitoring reports and any issues arising from the Committee's work in promoting high standards of conduct. The views of this Committee assist in the development of an ongoing work plan.
- 3.3 Attached at Appendix 2 to the report is a draft Work Programme for the Committee for the Municipal Year 2022-2023.
- 3.4 The draft Work Programme reflects ongoing priorities and standard reports and the frequency of reporting. The Committee is invited to review the draft Work Programme taking into account available resources, and add or remove items as necessary.

##### **4. LEGAL IMPLICATIONS**

- 4.1 There are no legal implications arising from this report however the Committee is reminded of its statutory role contained in the extract from the

Local Government Act 2000 set out below which should be considered alongside its terms of reference when setting the Work Programme:

*54 Functions of standards committees*

*(1) The general functions of a standards committee of a relevant authority are--*

*(a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and*

*(b) assisting members and co-opted members of the authority to observe the authority's code of conduct.*

*(2) Without prejudice to its general functions, a standards committee of a relevant*

*authority has the following specific functions—*

*(a) advising the authority on the adoption or revision of a code of conduct,*

*(b) monitoring the operation of the authority's code of conduct, and*

*(c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.*

- 4.2 The Committee has the same statutory functions in relation to Community and Town Councils (and Community and Town Councillors) as it has in relation to this Council and its Councillors (pursuant to section 56(1) of the Local Government Act 2000).

**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 consultation implications arising from this report subject to the agreed Work Programme being delivered within existing financial resources.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL**

**STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

**REPORT OF THE MONITORING OFFICER**

**Background Papers:** Freestanding matter

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

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**RHONDDA CYNON TAF CBC STANDARDS COMMITTEE**

**TERMS OF REFERENCE**

The Standards Committee has the following roles and functions:

- (a) promoting and maintaining high standards of conduct by Councillors, co-opted Members and Church and Parent Governor representatives;
- (b) assisting the Councillors, co-opted Members and Church and Parent Governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) advising, training or arranging to train Councillors, co-opted Members and Church and Parent Governor representatives on matters relating to the Members' Code of Conduct;
- (f) granting dispensations to Councillors, co-opted Members and Church and Parent Governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- (g) dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that Officer by the Public Services Ombudsman For Wales;
- (h) overview of complaints handling and Ombudsman investigations relating to Councillors, co-opted Members and Church and Parent Governor representatives;
- (i) oversight of the Members' protocols adopted by the Council;
- (j) oversight of the register of personal interests maintained under Section 81 of the Local Government Act 2000;
- (k) oversight of the gifts and hospitality register;
- (l) monitor adherence to the Council's Management of Unreasonably Persistent Customers Policy by Group and Service Directors; and
- (m) the Committee will exercise the functions set out in (a) - (g) above in relation to Community Councils and Members of Community Councils.

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## STANDARDS COMMITTEE WORK PROGRAMME

**Forward plan of proposed Committee Business for the 2022 - 2023 Municipal Year**

**Specific Period: - November 2022 – April 2023**

***N.B – The work programme is subject to change to take account of any additional / deletion of reports, including any new consultative documents or legislative initiatives from the Welsh Government, which require urgent attention, Public Services Ombudsman for Wales referrals and hearings under the Council's Local Resolution Protocol – Standards of Conduct to be followed by Members***

Key Decision	Brief Outline	Responsible Officer	Open / Exempt Report	Consultation undertaken prior to Decision being made?
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<b>NOVEMBER 2022</b>	<b>18.11.22</b>
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Draft Standards Committee Work Programme	To consider a draft Work Programme for the Committee for the Municipal Year 2022 - 2023	Monitoring Officer	Open	Chair of the Committee
Code of Conduct Training	To receive an oral update from the Monitoring Officer on the completion of Code of Conduct training following the 2022 May Local Elections	Monitoring Officer	Open	None
Public Services Ombudsman For Wales – Summary of Complaints 2022-2023	Summary of Complaints against Members from the 1 <sup>st</sup> April 2022 – 31 <sup>st</sup> October 2022	Monitoring Officer	Open	None
Public Services Ombudsman For Wales – Annual Report and Letter 2021 - 2022	To provide Members with a summary of Code of Conduct matters as set out in the Ombudsman’s Annual Report and Letter to this Council 2021 – 2022	Monitoring Officer	Open	Cabinet / Governance & Audit Committee
Public Service Ombudsman for Wales – Recent Investigation Outcomes – ‘Our Findings’	To consider the summary of investigation outcomes concerning alleged breaches of the Members’ Code of Conduct as published by the Public Services Ombudsman for Wales (PSOW) on the ‘our findings’ section of her website for the period 1st April 2021 – 31st October 2022.	Monitoring Officer	Open	None
Adjudication Panel Decisions	To provide an information report in respect of any recent Adjudication Panel Decisions not previously reported	Monitoring Officer	Open	None
Dispensation Application	To consider an application for dispensations made in accordance with The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001	Monitoring Officer	Open	None
Group Leaders’ duties in respect of standards of conduct	To consider the arrangements to be put in place in order to comply with the new duties of political group leaders in relation to standards of conduct and corresponding new duties placed on standards committees (introduced by Part 4 of the Local Government and Elections (Wales) Act 2021	Monitoring Officer	Open	None



Key Decision	Brief Outline	Responsible Officer	Open / Exempt Report	Consultation undertaken prior to Decision being made?
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Letter to Chair of Standards Committees from Michelle Morris, PSOW and revised PSOW Code of Conduct Guidance	To consider the PSOW letter to Chairs of Standards Committees including the publication of revised PSOW guidance on the Code of Conduct	Monitoring Officer	Open	Group Leaders
National Forum for Standards Committee Chairs – Draft Terms of Reference	To update Members in respect of the National Forum for Standards Committee Chairs and consider the Forum’s draft Terms of Reference.	Monitoring Officer	Open	Wales Monitoring Officers/ Standards Committees

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## MARCH 2023

10.03.23

Public Services Ombudsman For Wales – Summary of Complaints 2022-2023	Summary of Complaints against Members from the 1 <sup>st</sup> November 2022 – 1 <sup>st</sup> March 2023	Monitoring Officer	Open	None
Review of the Council’s Member-Officer Protocol	To consider whether any updates/amendments are required to the Council’s Member-Officer Protocol and propose any recommendations to Full Council	Monitoring Officer	Open	Full Council are required to approve any amendments
Public Services Ombudsman For Wales – Our Findings Summaries	To consider the Our Findings summaries for the relevant period	Monitoring Officer	Open	None
Adjudication Panel Decisions	To provide an information report in respect of any recent Adjudication Panel Decisions not previously reported	Monitoring Officer	Open	None
Standards Committee Annual Report 2022 - 2023	To consider a draft Standards Committee annual report for the Municipal Year 2022 -2023	Monitoring Officer	Open	None
Adjudication Panel For Wales Annual Report 2021-2022	To consider the Adjudication Panel For Wales’ Annual Report 2021-2022 following publication	Monitoring Officer	Open	None
Update on Welsh Government (WG) review of the Ethical and Standards Framework in Wales and Local Government and Elections (Wales) Act 2021	To receive an update in respect of aspects of the Act relating to the terms of reference of the Standards Committee and associated ethics issues and on the WG review of the Ethical and Standards Framework in Wales	Monitoring Officer	Open	None

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Key Decision	Brief Outline	Responsible Officer	Open / Exempt Report	Consultation undertaken prior to Decision being made?
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**MISCELLANEOUS** (the following items to be considered as and when appropriate / necessary during the Municipal Year)

Public Services Ombudsman For Wales – ‘Our Findings’ summaries	To provide information in respect of the publication of the ‘our findings’ summaries by the Public Services Ombudsman For Wales	Monitoring Officer	Open	
Dispensation Applications	To consider applications for dispensations made in accordance with The Standards Committees (Grant of Dispensations) (Wales) Regulations 2001	Monitoring Officer	Open	
Local Resolution Protocol – Standards of Conduct To Be Followed By Members	To consider complaints made under Stage 2 of the Local Resolution Protocol	Monitoring Officer	Open	
Public Services Ombudsman For Wales – Members Code of Conduct Complaints	To consider any allegations that a Member has failed or may have failed to comply with the Members Code of Conduct contained in a report of the Public Services Ombudsman For Wales undertaken under Section 69 of the Local Government Act 2000	Monitoring Officer	Open	
Review of Standards Committee Member’s Training Needs	To consider any requirements in respect of Committee Members’ training needs	Monitoring Officer	Open	



## RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

### STANDARDS COMMITTEE

18 NOVEMBER 2022

### **PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS AGAINST MEMBERS – 1<sup>ST</sup> MARCH 2022 – 31<sup>ST</sup> OCTOBER 2022**

#### **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 1<sup>st</sup> March 2022 – 31<sup>st</sup> October 2022.

#### **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 1<sup>st</sup> March 2022 – 31<sup>st</sup> October 2022.

#### **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, she 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 during the reporting period 1<sup>st</sup> March 2022 – 31<sup>st</sup> October 2022:

Date Complaint Received by the Ombudsman	Body & Cllr	Nature of Complaint	Ombudsman Investigation Yes/No
10/03/22	Taffs Well & Nantgarw Community Council (Community Councillor)	Mr W complained Cllr D had made a vexatious false complaint to the PSOW about Cllr L and had made disrespectful comments and breached data protection legislation. PSOW found complainant had not provided sufficient evidence to substantiate complaint and that original complaint was not vexatious in nature. Data Protection matters were an issue for the Information Commissioner to consider and investigate in the first instance and not the PSOW.	No
22/03/22	Llantwit Fardre Community Council (Community Councillor)	Cllr E complained Cllr S acted in a bullying manner and failed to show respect and consideration at a meeting where councillors were present and behaved in a bullying manner towards the Clerk. As this complaint was considered during the election period and as Cllr S was no longer a Councillor any sanction would have limited scope and it was deemed not in the public interest to continue with the complaint particularly as relationships within the Council had settled.	No
01/04/22	Pontypridd Town Council (Community Councillor)	<p>Mrs A complained Cllr N shared a Facebook post made by Cllr N which contained foul language, made xenophobic comments and negative comments directed to residents. It contained references to Nazism and anti-semitism.</p> <p>The Ombudsman reviewed the Facebook post, the comments generated in response to it and Cllr N's responses to those comments.</p> <p>Where a complaint relates to the conduct of a councillor exercising their Article 10 (Freedom of expression) rights the PSOW must carefully consider whether any investigation and any sanction which may ultimately be imposed would be a proportionate interference with those rights.</p> <p>PSOW found matters alleged did not in fact constitute a breach of the Code. The post and comments fell within the realms of freedom of expression. The comments were not so egregious or offensive as to amount to a breach of the Code. In addition they added criticism of ideas and opinion is part of the democratic debate and does not in itself amount to bullying or failing to treat people equally.</p>	No

#### 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**

**18 NOVEMBER 2022**

**REPORT OF THE MONITORING OFFICER**

**Background Papers:** Freestanding matter

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



## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

### **PUBLIC SERVICES OMBUDSMAN FOR WALES - ANNUAL REPORT AND LETTER 2021–2022**

#### **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 2021-2022.

##### **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 2021-2022.

##### **3. BACKGROUND AND PSOW 2021-22 ANNUAL REPORT**

- 3.1 The PSOW has published his Annual Report for 2021-2022 ('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/2022/08/ANNUAL-REPORT-2021-22-Signed-Version.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 2021-2022. 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 It should be noted that Nick Bennett’s term of office as PSOW finished in March 2022 when Michelle Morris, former Chief Executive of Blaenau Gwent CBC, took over the role.

3.6 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.”*

3.7 The PSOW received 294 new complaints about the Code of Conduct – 5% less than in 2021/22 but 27% more than in 2019/20. 58% (171) of those complaints concerned Town and Community Councils. This represents 2% more than in 2020/21 and 27% more than in 2019/20. 39% (114) of the total complaints received related to complaints about County and County Borough Councillors. This represented 17% less than in 2020/21 but 19% more than in 2019/20. There were 5 complaints about members of National Park Authorities and 4 related to members on Police and Crime Panels.

3.8 The table below shows the proportion of complaints received for each subject:

<b>Subject</b>	<b>2021/22</b>	<b>2020/21</b>	<b>2019/20</b>
Accountability & Openness	5%	4%	11%
Disclosure and registration of interests	11%	14%	17%
Duty to uphold the law	9%	8%	7%
Integrity	8%	12%	10%
Objectivity and propriety	11%	5%	2%
Promotion of equality and respect	51%	55%	49%
Selflessness and stewardship	5%	2%	3%



- 3.9 As in previous years, about half of the new Code of Conduct complaints that the PSOW received were about 'promotion of equality and respect'. Many of these cases, categorised by the PSOW under 'respect', are lower-level complaints. These are the ones where the PSOW will tend to decide quickly that they will not investigate, or where they recommend that the complaint is resolved locally. However, some of these complaints and many of those categorised under 'equality' commonly involve more serious allegations of bullying or discrimination.
- 3.10 There were 2 Code of Conduct complaints made about Members in relation to their role as RCT County Borough Councillors during the period, compared against 8 in 2020-2021. 1 complaint found no evidence of breach and another complaint was discontinued after investigation.
- 3.11 9 complaints were received in relation to Town and Community Councils within RCT as against 14 in the previous reporting period. Five were discontinued after investigation, 3 found no evidence of a breach and 1 was withdrawn – see Table F of Appendix 2.
- 3.12 In 2021-2022 the PSOW closed 281 cases. The most common outcome of the complaints were that they were 'closed after initial consideration'. The majority (241) 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.
- 3.13 39 complaints were taken forward for investigation in 2021-22 with the PSOW again directing investigative resources towards the more serious complaints where an investigation is required in the public interest. In 19 cases an investigation was discontinued, no evidence of breach was found or no further action was necessary. The main reasons the PSOW might decide no further action is necessary are if the councillor has acknowledged their behaviour and apologised, or has taken steps to put things right. There were 20 referrals (to either Standards Committees or the Adjudication Panel for Wales). 11 referrals were made to Standards Committees and 9 referrals to the Adjudication Panel for Wales. The Adjudication Panel for Wales and Standards Committees upheld and found breaches in all the referrals they considered in 2021/22.
- 3.14 Although the number of referrals is a very small proportion of all Code of Conduct complaints received, it was more than half of those the PSOW decided to investigate. It was also twice as many as last year and the highest number of referrals that were made since 2012/13. The PSOW is concerned about this increase. It suggests that the ethical standards of a small number of councillors have the potential to undermine public confidence and the reputation of local government democracy.
- 3.15 The PSOW has stipulated they want to see the overall number of low-level complaints about members of Town and Community Councils reduce and are concerned about the high number of referrals this year. The PSOW strongly believes that the way to overturn these trends is through training for councillors on the Code of Conduct. They would also encourage greater use of local resolution procedures. These procedures can deal with problems early and prevent the need for further escalation to their office, which can improve working relationships. Since not all members take up opportunities to undertake training, the PSOW is pleased that, under the Local Government

and Elections (Wales) Act 2021, Town and Community Councils must now make and publish a plan about the training provision for its members and staff. The first training plans must be ready and published by 5 November 2022. The PSOW expects these plans to include training about the Code of Conduct. The PSOW also welcomes the additional responsibilities that Group Leaders at principal councils have to promote good standards of behaviour.

- 3.16 In 2020/21 the PSOW received 27 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'. The PSOW investigated 11 of these complaints. So far the PSOW has closed one of those investigations. They decided in that case that no further action was necessary. The PSOW concluded investigations into 8 relevant complaints which were ongoing from 2020/21. Of these, one case was referred to a Standards Committee. The Committee decided that there was a breach of the Code of Conduct and censured the member. One case was referred to the Adjudication Panel for Wales. The Panel has not yet decided on that complaint. In three cases, investigations were discontinued. In three cases the PSOW decided that they did not need to take any further action in respect of the matters investigated. One of the investigations opened in 2020/21 is still 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 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**  
**18 NOVEMBER 2022**  
**REPORT OF THE MONITORING OFFICER**

**Background Papers:** Public Services Ombudsman for Wales' Annual Report  
2021-2022  
Public Services Ombudsman for Wales' Annual Letter –  
RCT CBC 2021-2022

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

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# Annual Report and Accounts

## Executive summary

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2021 / 2022

## About us

We have three main roles.

- We investigate complaints about public services.
- We consider complaints about councillors breaching the Code of Conduct.
- We drive systemic improvement of public services.

We are independent of all government bodies and our service is impartial and free of charge.

## How to find us

1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

Tel: 0300 790 0203  
Fax: 01656 641199  
Email: [ask@ombudsman.wales](mailto:ask@ombudsman.wales)  
Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)



## Highlights of the year

2021/22 was the final year of Nick Bennett's term of office as Ombudsman, a position he held since 2014. The last year was a challenging one for the office, with 32% more cases than the year before. We closed more complaints than ever, providing answers and putting things right for the people of Wales.

We welcomed Michelle Morris as Ombudsman from April 2022. Michelle is developing her Strategic Plan setting out how we will work to continue to deliver a fair and independent complaints service, for those dissatisfied with public services, and use the learning from complaints to make improvements.



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

We received this year a record number of new cases - 32% more than last year and 14% more than in 2019/20.

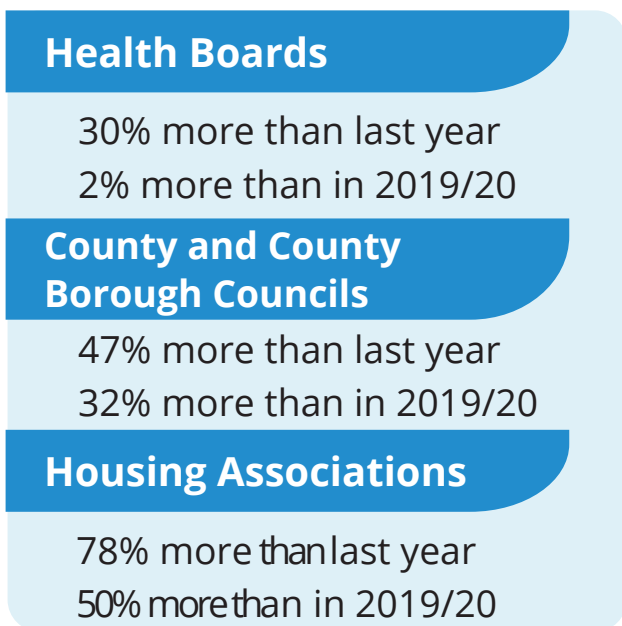


We delivered justice to more people in Wales by closing a record 2865 complaints about public services and the Code of Conduct - 29% more than last year and 14% more than in 2019/20.

### Complaints about public services

We saw more new complaints about:

People complained to us mainly about:



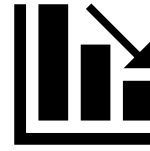
## Our interventions

459

18%

We found that something had gone wrong and had to intervene in 459 or about 18% of complaints about public services that we closed this year.

That was a lower proportion than in the last two years (20%).



69%

in 69%, we proposed Early Resolution to deliver justice quickly.

“The service was excellent, and the outcome achieved was positive. I could not have achieved this outcome without assistance from the ombudsman’s office. They helped me to achieve a sense of fairness.”

31%

in 31%, we intervened after investigating.

## Our recommendations

1,131

We issued 1131 recommendations to public service providers.

£132k

We recommended over £132,000 of financial redress – compared to £62,000 last year and £80,000 in 2019/20.

“We take comfort in the thought that all involved have learned some meaningful lessons and hopefully, as a result of your investigation, no other family may experience the situation we found ourselves in.”

26%

26% of our recommendations this year were about process change, more training or more information for staff.



Find all the complaints data that we refer to in this Report [on our website here.](#)



## Complaints about the Code of Conduct

Compared to last year, we received fewer complaints about the Code of Conduct. However, last year the volume of those complaints was unusually high. Compared to 2019/20, we received many more new Code of Conduct complaints.



We again saw more complaints about members of Town and Community Councils (2% more than last year and 27% more than in 2019/20).



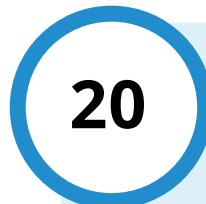
About a half of our new complaints about the Code of Conduct (51%) was about the promotion of equality and respect - a slightly lower proportion than last year (55%).

Although we closed slightly fewer Code of Conduct complaints than last year, we investigated a much higher proportion - 14%, compared to 8% last year.

In cases where we investigate and have evidence to suggest there may have been a serious breach of the Code of Conduct, we refer the complaint and our findings to a local standards committee or to the Adjudication Panel for Wales.

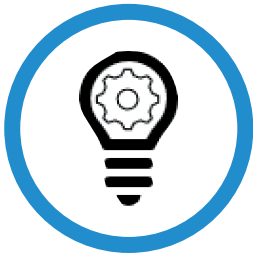


These bodies upheld and found breaches in all our referrals they considered in 2021/22. This gives us additional assurance that our process for considering these complaints is sound.



In 2021/22, we referred 20 complaints about the Code of Conduct to the Standards Committees of the relevant local authorities, or the Adjudication Panel for Wales. This was twice as many as last year. We are concerned about this increase.

“ I recognise the understanding and professionalism shown in your contribution to the hearing and deliberation on its outcome. Please accept my gratitude for your management of the case.



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

Despite the significant increase in our workload this year, we continued to promote learning from our complaints and improve broader public services.



We issued our Model Complaints Handling Policy and accompanying guidance to an initial 8 Housing Associations – bringing the total of bodies under Complaints Standards to 39.



We provided 140 virtual training sessions to public bodies across Wales



We launched the findings of our first wider Own Initiative Investigation –

**'Homelessness Reviewed: An open door to positive change'.**



We published on our website statistics about complaints made to County and County Borough Councils for the first time.



We completed 3 extended investigations (where we were already investigating a problem and extended the investigation to other issues or complainants).



We issued 7 public interest reports.



We published our third Equality and Human Rights Casebook.



We issued updated guidance – **'Principles of Good Administration'** and **'Good Records Management Matters'.**



We launched the **'Our Findings'** tool on our website, which replaces our traditional casebooks.



## We embrace learning and welcome feedback.

We do our best to make sure that we handle complaints fairly and in a transparent way. People who are unhappy with our decisions can ask for a review if they can show we did not properly consider the information they sent us, or if they can send us additional, new evidence.

**260**

We handled 260 review requests.

**20%** more than last year

**12%** more than in 2019/20

**7%**

We upheld only 7% of the review requests we closed – a lower proportion than last year (9%). Although there is always more work for us to do to improve, this gives us confidence in our decisions.

We want to deliver an excellent service. To check how well we do that, we invite feedback from people who complain to us and from the bodies in our jurisdiction. We use that feedback to improve how we work.

**26**

This year, 26 public bodies attended our Sounding Boards. They gave us good feedback but were broadly satisfied with our service.

Our workload pressures had an effect, with fewer service users happy with our service this year. We are working on a detailed action plan to improve how we work based on this feedback.

**43%**

43% of our complainants that we asked were happy with our customer service – compared to 51% in 2020/21. However, people were much happier with our service when they were also happy with the outcome of their complaint.

We received

**32**

complaints about us.

We upheld or partially upheld 41% - compared to 22% last year.



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

We are accountable to the Senedd for how we work and how we use our resources.

**£**

Our budget this year was £5.2m.

**£491**

Our unit cost per case this year was £491.

**77%**

We applied 77% of our resources to complaints handling.

**91%**

91% of our budgeted funding for new powers (£332k) was spent on implementation.

We understand that we need to play our part in protecting the environment and continue to develop sustainable working practices.



We produced just over 9000kg of waste - 255% more than last year, but 66% less than in 2019/20.



We used 2% more energy than last year, but 29% less than in 2019/20.



We sent 0% of our general waste to landfill.



We avoided 176 kg of CO2 in emissions



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



## We strive to ensure and promote equality, diversity and inclusion.

We work to make sure that people are aware of and trust our service - and that we are accessible to all who need us. We had some successes this year, but have more work to do.

**43%**

43% of people who responded to a national survey knew about us (compared to 48% in 2020).

**80%**

80% of our complainants that we asked said that it was easy to contact us (compared to 85% last year).

**221**

We took 221 oral complaints (compared to 63 last year) and our first complaint in British Sign Language.

“ Immensely helpful. I have dyslexia and wouldn't have been able to submit a complaint otherwise.

We are committed to creating an equal, diverse, and inclusive workplace.



86% of those who responded agreed that we are committed to creating a diverse, equal and inclusive workplace.



We again achieved the Chwarae Teg FairPlay Employer award at silver level, and reduced our median Gender Pay Gap to 3%, from 5% last year.



We achieved Autism Awareness Employer Status.



## We pull together and support each other.

We value and support our staff. The challenges that we faced during the year affected their health and wellbeing. We worked hard to support them during the year and will carry on this work in 2022/23, as we expect our workload to remain high.

**100%**

All our staff completed their annual appraisal process.

**72%**

72% of our staff completed 28 hours or more of continuing professional development.

**2.7%**

The average percentage of working days lost through staff sickness increased from 1.1% to 2.7%. This was largely because of long-term absences due to stress, mostly not work-related.

Of people who responded to our staff survey this year,

**87%**

said that PSOW was a good place to work, down from 96% in 2020.

**61%**

said that they had sufficient resources to do their work, down from 90% in 2020.

**93%**

said that their working arrangements were sufficiently flexible to allow them to balance their work and home life priorities, up from 87% in 2020.

**58%**

felt that workload pressure was reasonable, down from 76% in 2020.

Public Services Ombudsman for Wales

1 Ffordd yr Hen Gae

Pencoed

CF35 5LJ

Tel: 0300 790 0203

Fax: 01656 641199


Email: [ask@ombudsman.wales](mailto:ask@ombudsman.wales)

Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

Tudalen wag



Ask for: Communications

 01656 641150

Date: August 2022

 communications@ombudsman.wales

Cllr. Andrew Morgan  
Rhondda Cynon Taf County Borough Council  
By Email only: andrew.morgan2@rctcbc.gov.uk

Annual Letter 2021/22

Dear Councillor Morgan

I am pleased to provide you with the Annual letter (2021/22) for Rhondda Cynon Taf County Borough Council which deals with complaints relating to maladministration and service failure, complaints relating to alleged breaches of the Code of Conduct for Councillors and the actions being taken to improve public services

This is my first annual letter since taking up the role of Public Services Ombudsman in April 2022, and I appreciate that the effects of the pandemic are still being felt by all public bodies in Wales. Our office has not been immune from this, with records numbers of cases being referred to us over the last two years. The strong working relationships between my Office and local authorities continues to deliver improvements in how we are dealing with complaints and ensuring that, when things go wrong, we are learning from that and building stronger public services.

Complaints relating to Maladministration & Service Failure

Last year the number of complaints referred to us regarding Local Authorities increased by 47% (compared to 20/21 figures) and are now well above pre-pandemic levels. It is likely that complaints to my office, and public services in general, were suppressed during the pandemic, and we are now starting to see the expected 'rebound' effect.

During this period, we intervened in (upheld, settled or resolved at an early stage) a similar proportion of complaints about public bodies, 18%, when compared with recent years. Intervention rates (where we have investigated complaints) for Local Authorities also remained at a similar level - 14% compared to 13% in recent years.

Page 1 of 9

## Complaints relating to the Code of Conduct for Councillors

We also received a high number of Code of Conduct complaints last year, relating to both Principal Councils and Town and Community Councils. A record number (20) were referred to either the Adjudication Panel for Wales or local standards committees, due to evidence of a breach of the Code.

## Supporting improvement of public services

In addition to managing record levels of complaints, we also continued our work using our proactive powers in the Public Services Ombudsman (Wales) Act 2019. Specifically undertaking our first Own Initiative Investigation and continuing our work on the Complaints Standards Authority.

October 2021 saw the publication of the first own initiative investigation in Wales: [Homelessness Reviewed](#). The investigation featured three Local Authorities and sought to scrutinise the way Homelessness assessments were conducted. The report made specific recommendations to the investigated authorities, as well as suggestions to all other Local Authorities in Wales and Welsh Government. Some of these recommendations will bring about immediate change – updating factsheets and letter and assessment templates to ensure that key equality and human rights considerations are routinely embedded into processes for example – all the recommendations were designed to bring about tangible change to people using homelessness services in Wales.

The Complaints Standards Authority (CSA) continued its work with public bodies in Wales last year. The model complaints policy has already been adopted by local authorities and health boards in Wales, we have now extended this to an initial tranche of Housing Associations and Natural Resources Wales. The aim being to implement this work across the Welsh public sector.

In addition to this, the CSA published information on complaints handled by local authorities for the [first time](#) – a key achievement for this work. The data for 21/22 showed:

- Over 15,000 complaints were recorded by Local Authorities
- 4.88 for every 1000 residents.
- Nearly half (46%) of those complaints were upheld.
- About 75% were investigated within 20 working days.
- About 8% of all complaints closed ended up being referred to PSOW.

The CSA has now implemented a model complaints policy with nearly 50 public bodies, and delivered 140 training sessions, completely free of charge, during the last financial year. The feedback has been excellent, and the training has been very popular - so I would encourage Rhondda Cynon Taf County Borough Council to engage as fully as possible.

## Complaints made to the Ombudsman

A summary of the complaints of maladministration/service failure received relating to your Council is attached, along with a summary of the Code of Conduct complaints relating to members of the Council and the Town & Community Councils in your area.

In light of the new duties on political leaders and standards committees to promote and maintain high standards of conduct of their members, we look forward to working with you, your Monitoring Officer and standards committees to share any learning from the complaints we receive and to support your authority's work.

I would also welcome feedback on your Governance & Audit Committee's review of your authority's ability to handle complaints effectively so that we can take this into account in our work and support its work on the handling of complaints.

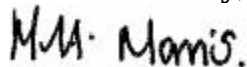
Finally, can I thank you and your officials for the positive way that local authorities have engaged with my Office to enable us to deliver these achievements during what has been a challenging year for everyone. I very much look forward to continuing this work and collaboration to ensure we further improve public services across Wales.

Further to this letter can I ask that your Council takes the following actions:

- Present my Annual Letter to the Cabinet and to the Governance & Audit Committee to assist members in their scrutiny of the Council's performance and share any feedback from the Cabinet and the Governance & Audit Committee with my office.
- Continue to engage with our Complaints Standards work, accessing training for your staff, fully implementing the model policy, and providing complaints data.
- Inform me of the outcome of the Council's considerations and proposed actions on the above matters by 30 September.

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,



Michelle Morris

Public Services Ombudsman

cc. Chris Bradshaw, Chief Executive, Rhondda Cynon Taf County Borough Council.

By Email only: [christopher.d.bradshaw@rctcbc.gov.uk](mailto:christopher.d.bradshaw@rctcbc.gov.uk)

## Factsheet

### Appendix A - Complaints Received

Local Authority	Complaints Received	Received per 1000 residents
Blaenau Gwent County Borough Council	14	0.20
Bridgend County Borough Council	55	0.37
Caerphilly County Borough Council	60	0.33
Cardiff Council*	182	0.50
Camarthenshire County Council	54	0.29
Ceredigion County Council	52	0.72
Conwy County Borough Council	27	0.23
Denbighshire County Council	34	0.36
Flintshire County Council	99	0.63
Gwynedd Council	39	0.31
Isle of Anglesey County Council	29	0.41
Merthyr Tydfil County Borough Council	27	0.45
Monmouthshire County Council	20	0.21
Neath Port Talbot Council	45	0.31
Newport City Council	40	0.26
Pembrokeshire County Council	39	0.31
Powys County Council	55	0.42
Rhondda Cynon Taf County Borough Council	51	0.21
Swansea Council	71	0.29
Torfaen County Borough Council	18	0.19
Vale of Glamorgan Council	61	0.46
Wrexham County Borough Council	71	0.52
<b>Total</b>	<b>1143</b>	<b>0.36</b>

\* inc 17 Rent Smart Wales

## Appendix B - Received by Subject

	Complaints Received	% Share
Rhondda Cynon Taf County Borough Council		
Adult Social Services	6	12%
Benefits Administration	0	0%
Children's Social Services	11	22%
Community Facilities, Recreation and Leisure	0	0%
Complaints Handling	4	8%
Covid19	0	0%
Education	1	2%
Environment and Environmental Health	9	18%
Finance and Taxation	1	2%
Housing	3	6%
Licensing	0	0%
Planning and Building Control	7	14%
Roads and Transport	4	8%
Various Other	5	10%
<b>Total</b>	<b>51</b>	

## 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	9	16	17	3	0	0	0	0	45
% Share	20%	36%	38%	7%	0%	0%	0%	0%	

## Appendix D - Cases with PSOW Intervention

	No. of interventions	No. of closures	% of interventions
Blaenau Gwent County Borough Council	0	13	0%
Bridgend County Borough Council	7	54	13%
Caerphilly County Borough Council	7	58	12%
Cardiff Council	45	159	28%
Cardiff Council - Rent Smart Wales	1	16	6%
Carmarthenshire County Council	7	49	14%
Ceredigion County Council	13	46	28%
Conwy County Borough Council	2	24	8%
Denbighshire County Council	4	33	12%
Flintshire County Council	15	94	16%
Gwynedd Council	6	41	15%
Isle of Anglesey County Council	3	28	11%
Merthyr Tydfil County Borough Council	2	26	8%
Monmouthshire County Council	2	21	10%
Neath Port Talbot Council	5	45	11%
Newport City Council	4	36	11%
Pembrokeshire County Council	2	40	5%
Powys County Council	7	55	13%
Rhondda Cynon Taf County Borough Council	3	45	7%
Swansea Council	10	76	13%
Torfaen County Borough Council	2	20	10%
Vale of Glamorgan Council	9	62	15%
Wrexham County Borough Council	4	67	6%
<b>Total</b>	<b>160</b>	<b>1108</b>	<b>14%</b>

## 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	1	0	0	0	0	2

## 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
Llanharan Community Council	0	0	0	0	0	1	1
Llantwit Fardre Community Council	1	1	0	0	0	0	2
Pontypridd Town Council	-	-	-	-	-	-	0
Taff's Well & Nantgarw Community Council	1	0	0	0	0	0	1
Ynysybwl & Coed-y-cwm Community Council	3	2	0	0	0	0	5



## Information Sheet

Appendix A shows the number of complaints received by PSOW for all Local Authorities in 2021/2022. 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 2021/2022. 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 2021/2022. 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 2021/2022. 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.

Tudalen way



## RHONDDA CYNON TAF

### RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

#### STANDARDS COMMITTEE

18 NOVEMBER 2022

### PUBLIC SERVICES OMBUDSMAN FOR WALES – RECENT INVESTIGATION OUTCOMES – ‘OUR FINDINGS’

#### REPORT OF THE MONITORING OFFICER

#### 1. PURPOSE OF REPORT

To consider the summary of investigation outcomes concerning alleged breaches of the Members’ Code of Conduct as published by the Public Services Ombudsman for Wales (PSOW) on the [‘our findings’](#) section of her website for the period 1<sup>st</sup> April 2021 – 31<sup>st</sup> October 2022.

#### 2. RECOMMENDATION

- 2.1 To note and consider the contents of the summary of investigation outcomes concerning alleged breaches of the Members’ Code of Conduct, originally published by the Public Services Ombudsman for Wales on the ‘our findings’ section of her website and attached as Appendix 1 to the report.

#### 3. BACKGROUND

- 3.1 The PSOW considers complaints that members of local authorities in Wales have breached the Code. There are four findings the PSOW can arrive at:

- (a) that there is no evidence of breach;
- (b) that no action needs to be taken in respect of the complaint;
- (c) that the matter be referred to the authority’s Monitoring Officer for consideration by the Standards Committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales (the APW) for adjudication by a tribunal.

It should also be noted that occasionally an investigation may be discontinued, where circumstances change during the course of an investigation and it is considered that it would not be in the public interest to continue to investigate.

- 3.2 Until 31<sup>st</sup> March 2021 the PSOW summarised complaints that had been investigated on a quarterly basis in a publication called the Code of Conduct Casebook (the Casebook). The final edition of the Casebook (edition 25) covered the period of January to March 2021. The Casebook has since been replaced by 'Our Findings', 'Our Findings' is a section on the PSOW website which includes a search tool to allow summaries of cases to be accessed by reference to the relevant organisation, matter type, dates, case reference numbers, or outcome. In terms of matter types, cases are broken down into the following categories:
- a. Integrity;
  - b. Promotion of Equality and Respect;
  - c. Disclosure or Registration of Interests;
  - d. Duty to Uphold the Law; and
  - e. Selflessness and Stewardship.
- 3.3 During the period 1<sup>st</sup> April 2021 – 31<sup>st</sup> October 2022 30 complaints were investigated by the PSOW, 6 of which were referred to the relevant Standards Committees and 5 of which was referred to the APW. In 9 cases it was considered that there was no evidence of a breach of the Code, in 5 cases no action was considered necessary and 5 cases were discontinued. 11 of the matters investigated fall under the category of Integrity, 13 under Promotion of Equality and Respect, 3 under Disclosure or Registration of Interests, 2 under Duty to Uphold the Law and 1 under Selflessness and Stewardship. The appendix to this report contains a summary of those cases, originally published in ['Our Findings'](#) between the 1<sup>st</sup> April 2021 – 31<sup>st</sup> October 2022.
- 3.4 There are number of themes that can be identified through the findings that can be summarised as follows: -
- i) Comments on social media are the cause of a significant number of complaints and members need to be very careful when writing what they might consider a throw away comment which might subsequently be either misconstrued (as in a number of cases) leading to lengthy investigation (which is a distressing process) or when expressing views that are a breach of the code;
  - ii) Discriminatory conduct against any protected characteristic under the Equality Act 2010 attracts severe sanctions; and
  - iii) Members have a private life and provided they are clear to demarcate the boundaries of private and public action then the PSOW will not take action in respect of private matters.
- 3.5 There may be other messages about poor behaviour that, together with those identified above, Committee Members may feel would be useful for the wider membership of the authority to be aware of.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

**REPORT OF MONITORING OFFICER**

**PUBLIC SERVICES OMBUDSMAN FOR WALES – RECENT INVESTIGATION  
OUTCOMES – ‘OUR FINDINGS’**

**BACKGROUND PAPERS**

**Freestanding Matter**

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

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**SUMMARY OF PSOW INVESTIGATION OUTCOMES CONCERNING ALLEDGED MEMBERS' CODE OF CONDUCT BREACHES - 1<sup>ST</sup> APRIL 2021 – 31<sup>ST</sup> OCTOBER 2022**

**Integrity: Pembrokeshire County Council**

Report date

30/03/2022

CODE - No evidence of breach

It was alleged that a Councillor (“the Member”) posted videos on the social media platform, TikTok, which brought their office as a councillor and Pembrokeshire County Council (“the Council”) into disrepute.

The Ombudsman commenced an investigation into whether the Member may have breached paragraph 6(1)(a) of the Code of Conduct, that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

The investigation found that the Member posted a series of videos, some of which included TikTok sounds which contained expletives. The Member, who had been appointed to a school governing body, was suspended from the governing body while the matter was investigated by the Council. A number of witnesses were interviewed. Some considered the videos to be distasteful. The Council’s investigation found that the videos did not impact on the Member’s role as a governor.

The investigation found the Member was acting in his private capacity when he posted the videos. Relevant caselaw has established that for a breach of the “disrepute” provision to be found, a member’s conduct must impact upon their Council’s reputation and/or the role of elected member and go beyond affecting their personal reputation. While the nature of the videos may be considered distasteful by some, TikTok sounds are widely and easily available on TikTok and are often widely reproduced by TikTok users in large quantities. TikTok is a social media platform in which users are required to be 13 years old and content of the type posted by the Member is widely and freely available without censorship. The videos were clearly intended to be humorous and to make people laugh. The videos were not directed at anyone and do not display any intent to cause harm or upset.

The Ombudsman found that there was no evidence of any failure to comply with the Code of Conduct of the relevant authority concerned.

### Integrity: Pencoed Town Council

Report date

17/06/2022

#### **CODE - Referred to the Adjudication Panel for Wales**

I received a complaint that a Former Councillor of Pencoed Town Council had failed to declare a criminal conviction when he stood for election in 2018 and in doing so had breached the Code of Conduct for elected members.

My investigation found that the Former Councillor had been convicted of an offence in July 2015 and that this conviction disqualified him from standing as an elected member. The Former Councillor stood for election to Pencoed Town Council in November 2018 and could not have done so had they not made a false declaration on their nomination paper. The deception did not come to light until an article featured in a national newspaper in July 2020. The Former Councillor resigned once this information became public but had acted as a member for 1 year and 8 months when he was not eligible to do so.

I considered that the Former Councillor misled the Town Council as to their eligibility to be a Councillor and that their dishonesty, both when signing the declaration of acceptance of office and during the year and 8 months that they acted as a Councillor, was a serious abuse of office which goes against the principles that underpin the Code of Conduct. The Former Councillor did not engage with the investigation and did not give any explanation for their actions or show any remorse.

I considered the Former Member's actions were suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct and my finding was that the matter should be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

APW heard the case on 10 June 2022 and found that the Former Councillor had been elected on a false premise and that his declaration of acceptance of office, undertaking to abide by the Code continuation in office took place on the same false premise. APW found that the Consent to Nomination and Guidance to Candidates were so clear that it was inconceivable that the Former Councillor was unaware of the fact he was disqualified from being elected and his actions were either deliberate or as the result of extreme recklessness.



APW found that the fact that the Former Councillor was disqualified from being elected and yet continued to act as Member went to the heart of public trust in democracy and undermined the Code and standards regime. The Former Councillor continued to deal with his constituents and act on a false premise and this constituted a clear breach of paragraph 6(1)(a) of the Code. It also noted that the significant media and public attention and disquiet, would inevitably bring both the office of Member and his Authority into disrepute.

APW concluded that the Former Councillor should be disqualified for 24 months from being or becoming a member of the Council or any other relevant authority within the meaning of the Local Government Act 2000.

### **Integrity: Saltney Town Council**

Report date

15/06/2021

Subject

CODE : Integrity

CODE - No evidence of breach

Relevant body

Saltney Town Council

A Member (“the Member”) of Saltney Town Council (“the Council”) self-referred to the Ombudsman as the Solicitors Regulation Authority (“the SRA”) had publicly issued a disqualification order related to their former employment as a paralegal.

The Ombudsman investigated whether the Member’s conduct may amount to a breach of paragraph 6(1)(a) of the Code of Conduct (“the Code”).

The Ombudsman obtained copies of the SRA’s decision documents and found that it had reached a finding of dishonesty against the Member on the basis that the Member had provided false information to clients on the progress of their cases. There was no suggestion of any financial impropriety or criminal conduct on the Member’s part.

The Ombudsman found that, whilst the Member may have brought themselves personally into disrepute as a result of the SRA’s public decision notice, the Member’s role as a paralegal was entirely related to their private life and had no connection to the Council or their role as a Councillor. Furthermore, the SRA’s dishonesty finding related to the Member’s inability to

progress work. This being the case, the Ombudsman did not consider that the Member's actions amounted to a breach of paragraph 6(1)(a) of the Code.

### Integrity: Neath Port Talbot Council

Report date

20/07/2021

Subject

CODE : Integrity

CODE - No evidence of breach

Relevant body

Neath Port Talbot Council

The Ombudsman received a self-referred complaint that a Member ("the Member") of Neath Port Talbot Council ("the Council") had breached the Code of Conduct ("the Code") in respect of comments he had made during a private Labour Party meeting during October 2019. The comments were secretly recorded and later published on social media on 5 March 2021.

The Ombudsman began an investigation of some of the comments made and considered whether the Member had breached the following paragraphs of the Code:

- 6(1)(a) – members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 7(b)(v) – members must not use or authorise others to use, the resources of their authority improperly for political purposes.

In the recording, the Member commented on school reorganisation. The investigation found that comments made about the relocation of a particular school appeared to have been made in the context of a report that identified that the school was at risk of being affected by a landslide. The comments were based on independent professional advice and were therefore not likely to amount to a breach of the Code.

The Member also made general comments about the Council's school reorganisation plans. Whilst the Member clearly expressed his preliminary views on the matter, he did not appear to discount the possibility of other options. Neither did he indicate that he would not be willing to consider the advice of appropriate officers. That being so, the comments did not amount to a breach of the Code.

During the recording, the Member suggested that he would refuse funding for a proposal supported by another political party in favour of a contradicting Labour proposal and, in doing so, referred to his involvement in the repair of a cemetery road in Ystalyfera. The decision to fund the work on the road was made by the Council's Capital Programme Steering Group. Whilst the Member was copied into correspondence, he was not involved in the decision to fund the work. As such, the Ombudsman concluded that there was no evidence to suggest that the Member misused his position in relation to this matter and there was no evidence of a breach of the Code.

The Member also made reference to "cutting out" another member when putting through a regeneration programme which that member had been campaigning about for several years. The investigation found no evidence of any deliberate action by the Member to "cut out", or exclude the other member from the programme. There was a failure to keep the member informed of developments, however, it was not the Member's responsibility to do so and, in any event, a Council officer took ultimate responsibility for this oversight. There was no evidence of a breach of the Code by the Member.

The Member was informed that no evidence of breaches of the Code were found during the investigation.

### Integrity: Gwynedd Council

Report date

02/09/2021

Subject

CODE : Integrity

CODE - Referred to Standards Committee/APW

Relevant body

Gwynedd Council

The Ombudsman received a complaint from a member of Gwynedd Council and Caernarfon Royal Town Council that a Member ("the Member") of those Councils had failed to observe the Councils' Codes of Conduct for Members.

It was alleged that the Member failed to show respect and consideration to the complainant over several months, and his correspondence was suggestive of a course of conduct intended to bully and/or harass the complainant. It was alleged that the Member used, or attempted to use, his position improperly and brought his office or authority into disrepute by posting

information provided to him as an elected member on Facebook, posting information which he knew was incorrect on Facebook, posting confidential information on Facebook and by being involved in a police incident. The complainant also said that the Member made vexatious, malicious or frivolous complaints to the Clerk, the Ombudsman and the police about the complainant.

The investigation considered whether the Member failed to comply with the following provisions of the Code of Conduct:

- 4(b) – members must show respect and consideration for others.
- 4(c) – members must not use bullying behaviour or harass any person.
- 5(a) – members must not to disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so.
- 6(1)(a) – members must not to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 6(1)(d) – members must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, their authority.
- 7(a) – 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 any other person, a disadvantage.

During the investigation, it became apparent that the Member may have failed to comply with paragraph 6(2) of the Code of Conduct – members must comply with any request by the Ombudsman in connection with an investigation conducted in accordance with his statutory powers.

The investigation found that the Member had, over the course of several months, shared information about the complainant on Facebook and with professionals, associated with both Councils, about the complainant. The member also posted information, which should reasonably be regarded as confidential, about the complainant's family members. The investigation found that the Member approached the complainant in the street and began an altercation which required police involvement. The investigation also found that the Member made several complaints to the Clerk, the Police and to the Ombudsman, which lacked foundation and appeared to be motivated by malice or political rivalry.

The Ombudsman found that the member's behaviour was suggestive of a breach of paragraphs 4(b), 4(c), 6(1)(a), 6(1)(d), 6(2) and 7(a) of the Code of Conduct. He did not find a breach of paragraph 5(a) as the Member was not acting in his capacity as a member of the Council when he shared that information.

In relation to paragraph 6(2) of the Code of Conduct, the Ombudsman's Investigation Officer made reasonable and appropriate requests in connection with this investigation. The Investigation Officer also offered reasonable adjustments to afford the Member the opportunity to fully engage in the process. However, the Member deliberately failed to engage with my investigation in an attempt to obfuscate the process and that his actions were suggestive of a breach of paragraph 6(2) of the Code of Conduct.

The report on the investigation was referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

The Tribunal concluded that the Member had breached paragraphs 6(1)(d), 6(2) and 7(a) of the Code of Conduct. Accordingly, the Tribunal decided that the Member should be suspended from the Council for a period of 9 months or, if shorter, the remainder of his term in office. The Tribunal found that the Member had not breached paragraph 4(c) of the Code of Conduct. Whilst the Tribunal concluded that the Member had, "in principle", breached paragraphs 4(b), 6(1)(a) and 7(a) of the Code of Conduct, any restriction imposed would compromise a prima facie breach of the Members Article 10 rights, the right to freedom of speech. The Tribunal, therefore, considered that restriction was not justified.

### **Integrity: Caernarfon Royal Town Council**

Report date

02/09/2021

Subject

CODE : Integrity

CODE - Referred to Standards Committee/APW

Relevant body

Caernarfon Royal Town Council

The Ombudsman received a complaint from a member of Gwynedd Council and Caernarfon Royal Town Council that a Member ("the Member") of those Councils had failed to observe the Councils' Codes of Conduct for Members.

It was alleged that the Member failed to show respect and consideration to the complainant over several months, and his correspondence was suggestive of a course of conduct intended to bully and/or harass the complainant. It was alleged that the Member used, or attempted to use, his position improperly and brought his office or authority into disrepute by posting information provided to him as an elected member on Facebook, posting information which he knew was incorrect on Facebook, posting confidential information on Facebook and by being involved in a police incident. The complainant also said that the Member made vexatious, malicious or frivolous complaints to the Clerk, the Ombudsman and the police about the complainant.

The investigation considered whether the Member failed to comply with the following provisions of the Code of Conduct:

- 4(b) – members must show respect and consideration for others.
- 4(c) – members must not use bullying behaviour or harass any person.
- 5(a) – members must not to disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so.
- 6(1)(a) – members must not to conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 6(1)(d) – members must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, their authority.
- 7(a) – 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 any other person, a disadvantage.

During the investigation, it became apparent that the Member may have failed to comply with paragraph 6(2) of the Code of Conduct – members must comply with any request by the Ombudsman in connection with an investigation conducted in accordance with his statutory powers.

The investigation found that the Member had, over the course of several months, shared information about the complainant on Facebook and with professionals, associated with both Councils, about the complainant. The member also posted information, which should reasonably be regarded as confidential, about the complainant's family members. The

investigation found that the Member approached the complainant in the street and began an altercation which required police involvement. The investigation also found that the Member made several complaints to the Clerk, the Police and to the Ombudsman, which lacked foundation and appeared to be motivated by malice or political rivalry.

The Ombudsman found that the member's behaviour was suggestive of a breach of paragraphs 4(b), 4(c), 6(1)(a), 6(1)(d), 6(2) and 7(a) of the Code of Conduct. He did not find a breach of paragraph 5(a) as the Member was not acting in his capacity as a member of the Council when he shared that information.

In relation to paragraph 6(2) of the Code of Conduct, the Ombudsman's Investigation Officer made reasonable and appropriate requests in connection with this investigation. The Investigation Officer also offered reasonable adjustments to afford the Member the opportunity to fully engage in the process. However, the Member deliberately failed to engage with my investigation in an attempt to obfuscate the process and that his actions were suggestive of a breach of paragraph 6(2) of the Code of Conduct.

The report on the investigation was referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

The Tribunal concluded that the Member had breached paragraphs 6(1)(d), 6(2) and 7(a) of the Code of Conduct. Accordingly, the Tribunal decided that the Member should be suspended from the Council for a period of 9 months or, if shorter, the remainder of his term in office. The Tribunal found that the Member had not breached paragraph 4(c) of the Code of Conduct. Whilst the Tribunal concluded that the Member had, "in principle", breached paragraphs 4(b), 6(1)(a) and 7(a) of the Code of Conduct, any restriction imposed would compromise a prima facie breach of the Member's Article 10 rights, the right to freedom of speech. The Tribunal, therefore, considered that restriction was not justified.

### [Integrity: Pembrokeshire County Council](#)

Report date

14/09/2021

Subject

CODE : Integrity

CODE - No evidence of breach

Relevant body

## Pembrokeshire County Council

The Ombudsman undertook an investigation against a Member (“the Member”) of Pembrokeshire County Council (“the Council”) to consider whether the Member misled him during the course of an ongoing investigation.

The Ombudsman considered whether the Member may have breached paragraph 6(1)(a) of the Code of Conduct (“the Code”).

The Member had been interviewed as a witness in an ongoing investigation. Following his initial interview, information was sought from third parties which indicated that the information provided by the Member at interview was incorrect. The Member was subsequently interviewed on a second occasion and as there appeared to be discrepancies in the information provided by the Member, the Ombudsman began an investigation.

The Member provided a full statement to the Ombudsman in response to the allegation. The Ombudsman accepted the explanations provided by the Member regarding the discrepancies in his 2 interviews. Although the Ombudsman considered that the Member could have been more clear in his interviews, he did not consider that there was a deliberate attempt on the Member’s part to provide misleading information during the investigation. Therefore, the Ombudsman found no evidence of a breach of paragraph 6(1)(a) of the Code of Conduct.

## Integrity: Vale of Glamorgan Council

Report date

08/11/2021

Subject

CODE : Integrity

CODE - Referred to Standards Committee/APW

Relevant body

Vale of Glamorgan Council

The Ombudsman received a complaint that a Member (“the Member”) of Vale of Glamorgan Council (“the Council”) and Barry Town Council (“the Town Council”), and the Council’s Planning Committee, had breached the Code of Conduct for Members by opening a coffee shop and wine bar without the correct change of use planning permission being in place.

The Ombudsman’s investigation found that the Member had been a joint director of the coffee shop and wine bar, and the business had opened before the Member’s change of use



planning application was decided (in breach of planning control). The Ombudsman's investigation also found that when a potential breach of the Code of Conduct regarding the situation was brought to the Member's attention, the Member immediately resigned as a director and had no further involvement in the business. The Ombudsman concluded that, as a member of the Council's Planning Committee, the Member had sufficient knowledge of relevant planning matters to understand the importance of adhering to planning regulations, and the Member should have considered his position, and sought advice about his role, before opening the business without correct planning permission.

The Ombudsman found that the Member's conduct could reasonably be regarded as behaviour which might bring the office of Member of the Council into disrepute and was therefore suggestive of a breach of 6(1)(a) of the Code of Conduct. The Ombudsman referred his investigation report to the Monitoring Officer of Vale of Glamorgan Council for consideration by its Standards Committee.

The Standards Committee of Vale of Glamorgan Council determined that the Member had breached 6(1)(a) of the Code of Conduct and suspended him for 1 month.

### **Integrity: Barry Town Council**

Report date

**08/11/2021**

Subject

**CODE : Integrity**

**CODE - Discontinued**

Relevant body

**Barry Town Council**

The Ombudsman received a complaint that a Member ("the Member") of Vale of Glamorgan Council ("the Council") and Barry Town Council ("the Town Council"), and the Council's Planning Committee, had breached the Code of Conduct for Members by opening a coffee shop and wine bar without the correct change of use planning permission being in place. The Ombudsman's investigation found that the Member had been a joint director of the coffee shop and wine bar, and the business had opened before the Member's change of use planning application was decided (in breach of planning control). The Ombudsman's investigation also found that when a potential breach of the Code of Conduct regarding the situation was brought to the Member's attention, the Member immediately resigned as a director and had no further involvement in the business. The Ombudsman concluded that, as

a member of the Council's Planning Committee, the Member had sufficient knowledge of relevant planning matters to understand the importance of adhering to planning regulations, and the Member should have considered his position, and sought advice about his role, before opening the business without correct planning permission. The Ombudsman found that the Member's conduct could reasonably be regarded as behaviour which might bring the office of Member of the Council into disrepute and was therefore suggestive of a breach of 6(1)(a) of the Code of Conduct. The Ombudsman referred his investigation report to the Monitoring Officer of Vale of Glamorgan Council for consideration by its Standards Committee. The Standards Committee of Vale of Glamorgan Council determined that the Member had breached 6(1)(a) of the Code of Conduct and suspended him for 1 month

### **Integrity: Amlwch Town Council**

Report date

05/05/2022

Subject

CODE : Integrity

CODE - Discontinued

Relevant body

Amlwch Town Council

The Ombudsman received a complaint that a Member ("the Member") of Amlwch Town Council ("the Council") had breached the Code of Conduct when, in their role as a director of a charity, they made an application for an Economic Resilience Fund grant from the Isle of Anglesey County Council ("the County Council") without the authority of the charity and ignoring the views of other directors of the charity that it was not eligible for the grant. It was also alleged that the application made by the Member contained false information and that, once the funding was received, they attempted to transfer the funds into their personal account without authority.

The Ombudsman reviewed information received from the County Council, the Council, the Member and North Wales Police. The member said that her action, made in her personal capacity as a director of the charity, were in the interests of the charity and the community. The Member was unsuccessful in their attempt to transfer the funds into their personal bank account, and the funds were returned when the ineligibility was identified. North Wales Police confirmed that it was not investigating the allegations as the Council did not wish to pursue a

complaint. This suggested that the Council was not of the view that there was any criminal or fraudulent intent on the Member's part.

The Ombudsman also considered that the Member was not standing for re-election to the Council, the County Council or any other Town or Community Council within the County Council area. Therefore, the Ombudsman was no longer satisfied that an investigation into the complaint was in the public interest and decided to discontinue the investigation.

### **Integrity: Gwynedd Council**

Report date

**09/05/2022**

Subject

**CODE : Integrity**

**CODE - No evidence of breach**

Relevant body

**Gwynedd Council**

The Ombudsman received a complaint that a Member ("the Member") of Gwynedd Council ("the Council") had breached the Code of Conduct when he shared material on his Facebook account which cast doubt on the existence of COVID-19 and about the vaccine, and when he appeared on a television show to discuss his views on COVID-19 and the vaccine.

The Ombudsman reviewed the member's Facebook activity and his appearance on the television show. The former Chief Executive of the Council was interviewed and comments were sought from the Member.

The Ombudsman found that the Member was entitled to freedom of expression and to hold and express his views regarding the COVID-19 pandemic and the COVID-19 vaccine (under Article 10 of the European Convention on Human Rights, which is incorporated into UK law by the Human Rights Act 1998). The Member's right to free speech allowed him to say things that may have been shocking or offensive to some people. The former Chief Executive's evidence suggested that the Member was not representing the 'Council's position'. The Member did not issue directions to members of the public in contravention of the public health measures in place at the time. Therefore, the Ombudsman did not consider there to be evidence that the Member breached the Code of Conduct.

## Promotion of equality and respect: Pembrokeshire County Council

Report date

17/06/2022

CODE - Promotion of equality and respect

Report type

CODE - Referred to Standards Committee

The Ombudsman received a complaint that a Member of Pembrokeshire County Council (“the Council”) had failed to observe the Code of Conduct for Members of the Council. It was alleged that the Member had published a post in June 2020 on the social media platform Facebook, which could be considered to be racist, and could have the potential to damage the reputation of the office of Member and of the Council.

The Ombudsman’s investigation established that the Member had publicly published his post in order to raise concerns about the Council’s decision to light up County Hall in support of Black Lives Matter. The Member deleted his entire Facebook profile page some weeks later. Numerous complaints about the post were made to the Council and to the Ombudsman’s office, and the Member was subject to local and national Press interest, as well as considerable comment on Facebook. The Member said that he considered the post to fall within his right to free speech because he did not believe he had really offended anybody, and the complaints that were made against him were politically motivated.

The Ombudsman accepted that the Member had the right to question the Council’s decision to support Black Lives Matter, however the language used by the Member was offensive and went beyond what would be expected of a councillor in a political discussion. The Member had not taken advantage of opportunities to attend equality and diversity training or social media training.

The Ombudsman determined that the Member may have breached the Council’s Code of Conduct, in particular paragraph 6(1)(a) as he could reasonably be regarded as having behaved in a manner which might bring the office of member, or the Council itself, into disrepute. The Ombudsman referred his investigation report to the Monitoring Officer of Pembrokeshire County Council for consideration by its Standards Committee.

The Standards Committee decided that the Member had made the post in his capacity as Councillor and censured him for breaches of paragraphs 4(b) and 6(1)(a) of the Code. It said it would have considered a suspension had the Member been re-elected at the recent Local Government elections.

### **Promotion of equality and respect: Pembroke Dock Town Council**

Report date

23/04/2021

Subject

CODE : Promotion of equality and respect

CODE - Referred to Standards Committee/APW

Relevant body

Pembroke Dock Town Council

The Ombudsman received a complaint that a Former Member of Pembroke Dock Town Council (“the Council”) had failed to observe the Code of Conduct for Members of the Council. It was alleged that the Former Member had published a post on the social media platform Facebook, which could be considered racist and could have the potential to damage the reputation of the Council.

The Ombudsman’s investigation established that the Former Member had “liked” and “shared” the Facebook post, and that there had been a short delay before he took the post down. The investigation found that the Former Member had misled a local newspaper by stating that his Facebook account had been “hacked”, but had corrected this within 48 hours. It also found that the Former Member resigned as a member of the Council and was interviewed by police, who took no further action.

The Former Member said that he had not recognised the racist overtones when he shared the post, and was not a racist person. He apologised for any offense he might have caused. The Former Member accepted that he had the opportunity to attend Code of Conduct training which would have included training on equality issues. He had not attended, due partly to his disability, but accepted that he had not requested training in a manner more accessible to him.

The Ombudsman determined that the Former Member may have breached the Council’s Code of Conduct, in particular, paragraphs 4(a) and 4(b), as he may have failed to have due regard to the principle of equality of opportunity for all people while carrying out his duties,

and may not have shown due respect and consideration for others. The Ombudsman also found that the Former Member's actions could reasonably be regarded as behaviour which might bring the office of member, or the Council itself into disrepute, which may amount to a potential breach of paragraph 6(1)(a) of the Code of Conduct.

The Standards Committee of Pembrokeshire County Council determined that the Former Member had breached paragraphs 4(b) and 6(1)(a) of the Code of Conduct. The Former Member was given a censure.

### Promotion of equality and respect: Rhondda Cynon Taf County Borough Council

Report date

30/07/2021

Subject

CODE : Promotion of equality and respect

CODE - No evidence of breach

Relevant body

Rhondda Cynon Taf County Borough Council

The Ombudsman received a complaint that a Former Member of Rhondda Cynon Taf County Borough Council ("the Council") and Llantwit Fardre Community Council ("the Community Council") had breached the Code of Conduct for Members ("the Code") in using the term "Pikies" during a community WhatsApp group discussion.

The Ombudsman investigated whether the Former Member's conduct may have breached paragraphs 4(a), 4(b) and 6(1)(a) of the Code. During the investigation the Member resigned from both the Council and Community Council. The Ombudsman's investigation found that the community WhatsApp group was comprised of members of a village hall committee and at the time of the exchange the Former Member was not a Council or Community Council representative on the committee or WhatsApp group. The Ombudsman found the Former Member was not acting in his public role during the exchange and therefore paragraphs 4(a) and 4(b) of the Code were not engaged when he made the post in his private capacity, and these provisions of the Code were not engaged when the Former Member made his comment on WhatsApp.

The Ombudsman considered that had the Former Member been a Council or Community Council representative, his conduct could be suggestive of a breach of paragraph 6(1)(a) of the Code. However, the Ombudsman was not persuaded there was a sufficient link to the

Former Member's role to suggest the comment would affect the reputation of the Former Member's office or authority. This being the case, the Ombudsman did not consider that the conduct was suggestive of a breach of paragraph 6(1)(a) of the Code.

### **Promotion of equality and respect: Llantwit Fardre Community Council**

Report date

**30/07/2021**

Subject

**CODE : Promotion of equality and respect**

**CODE - No evidence of breach**

Relevant body

**Llantwit Fardre Community Council**

The Ombudsman received a complaint that a Former Member of Rhondda Cynon Taf County Borough Council ("the Council") and Llantwit Fardre Community Council ("the Community Council") had breached the Code of Conduct for Members ("the Code") in using the term "Pikies" during a community WhatsApp group discussion.

The Ombudsman investigated whether the Former Member's conduct may have breached paragraphs 4(a), 4(b) and 6(1)(a) of the Code. During the investigation the Member resigned from both the Council and Community Council. The Ombudsman's investigation found that the community WhatsApp group was comprised of members of a village hall committee and at the time of the exchange the Former Member was not a Council or Community Council representative on the committee or WhatsApp group. The Ombudsman found the Former Member was not acting in his public role during the exchange and therefore paragraphs 4(a) and 4(b) of the Code were not engaged when he made the post in his private capacity, and these provisions of the Code were not engaged when the Former Member made his comment on WhatsApp.

The Ombudsman considered that had the Former Member been a Council or Community Council representative, his conduct could be suggestive of a breach of paragraph 6(1)(a) of the Code. However, the Ombudsman was not persuaded there was a sufficient link to the Former Member's role to suggest the comment would affect the reputation of the Former Member's office or authority. This being the case, the Ombudsman did not consider that the conduct was suggestive of a breach of paragraph 6(1)(a) of the Code.

### **Promotion of equality and respect: Abertillery & Llanhilleth Community Council**

Report date

02/08/2021

Subject

CODE : Promotion of equality and respect

CODE - Referred to Standards Committee/APW

Relevant body

Abertillery & Llanhilleth Community Council

The Ombudsman received a complaint that a Member (“the Member”) of Abertillery & Llanhilleth Community Council (“the Council”) had breached the Code of Conduct.

It was alleged that the Member had shown a disregard for the principle of equality, by making comments about another member’s hearing impairment and deliberately making it difficult for that member to participate in Council meetings.

The investigation considered whether the Member failed to comply with the following provisions of the Code of Conduct:

- 4(a) – members must carry out their 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.
- 4(b) – members must show respect and consideration for others.
- 4(c) – members must not use bullying behaviour or harass any person.

During the investigation, it became apparent that the Member may have failed to comply with paragraphs 6(1)(a) (members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute) and 6(2) of the Code of Conduct (members must comply with any request by the Ombudsman in connection with an investigation conducted in accordance with his statutory powers).

Five witnesses were interviewed during the investigation: all were members of the Council. The investigation found that the evidence suggested that the Member had directly discriminated against another member by making discriminatory remarks about her disability during and immediately after a Council meeting on 30 October 2019, and by deliberately making it difficult for her to participate at Council meetings. The Ombudsman concluded that the Member’s behaviour was suggestive of a serious breach of paragraph 4(a) of the Code of Conduct.



The Ombudsman considered that the Member's comments about the other member's disability were a clear attempt to intimidate and undermine her. He considered that the Member's behaviour was also suggestive of a breach of paragraph 4(b) of the Code of Conduct.

The Member denied that his actions breached the Code of Conduct, but he refused to be interviewed so that he could provide an account for the specific actions complained about. The other member said that she felt distressed and intimidated after the meeting on 30 October. Witnesses have also described the other member as being visibly upset during Council meetings. On balance, I consider that the Member behaved in a way that is suggestive of a breach of paragraph 4(c) of the Code of Conduct. The Ombudsman was also of the view that it would be reasonable to regard such conduct as capable of bringing the Member's office or authority into disrepute and was therefore suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct.

In relation to paragraph 6(2) of the Code of Conduct, the Ombudsman's Investigation Officer made reasonable and appropriate requests in connection with this investigation. The Investigation Officer took extra steps, causing a delay in the process, to appease the Member and to help him feel comfortable with the process. The Investigation Officer also took steps to make reasonable adjustments to afford the Member the opportunity to fully engage. My view is that the Member deliberately failed to engage with my investigation in an attempt to obfuscate the process and that his actions were suggestive of a breach of paragraph 6(2) of the Code of Conduct.

The report on the investigation was referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

The Adjudication Panel for Wales concluded that the Member had breached paragraphs 4(a), 4(b), 4(c), 6(1)(a) and 6(2) of the Code of Conduct and suspended him for 10 months. It also recommended that the Member should undertake further training on the Code of Conduct, undertake Equality and Diversity training and provide the Complainant with a full written apology.

### **Promotion of equality and respect: Gwynedd Council**

Report date

05/10/2021

Subject

CODE : Promotion of equality and respect

CODE - No action necessary

Relevant body

Gwynedd Council

The Ombudsman received a complaint that a Member (“the Member”) of Gwynedd Council (“the Council”) had breached the Code of Conduct (“the Code”).

It was alleged that the Member posted a homophobic comment on Facebook. The Member was not acting in his official role as a member when he posted the comment, therefore, the investigation considered whether the Member breached paragraph 6(1)(a) of the Code, which says that members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

The information gathered during the investigation showed that in October 2020, the complainant’s newly appointed employee posted on Facebook, “think I work for the best boss” and tagged the complainant. The Member, posting from his personal Facebook account, replied, “do you suck for a living?”.

The employee was contacted as part of the Ombudsman’s investigation, however, he did not provide the Ombudsman with a completed witness statement. The evidence gathered was put to the Member and he was interviewed as part of the investigation. During interview, he said that there was no homophobic intent behind his comment and, whilst he accepted in hindsight that his comment could be perceived as homophobic, he said that his intention was to point out his view that the employee was “creeping up” to his employer.

Whilst the Ombudsman appreciated why the complainant and others had interpreted the comment as homophobic, he did not consider the Member’s explanation to be wholly implausible given that “sucking up” is a term commonly used to describe sycophantic behaviour.

The Member said that he regretted his actions and that faced with the same circumstances again, he would not have commented on the Facebook post. He also said that he was willing to apologise to the complainant and his employee for the offence that he had caused, which the Ombudsman encouraged him to do.

The Ombudsman did not consider it in the public interest to take any further action in relation to this matter

### Promotion of equality and respect: Sully and Lavernock Community Council

Report date

12/07/2021

Subject

CODE : Promotion of equality and respect

CODE - Referred to Standards Committee/APW

Relevant body

Sully and Lavernock Community Council

The Ombudsman received a complaint from an employee of Sully and Lavernock Community Council (“the Council”) that a Member (“the Member”) of the Council had failed to observe the Code of Conduct for Members.

It was alleged that, during an incident on a Council playing field concerning Council equipment, the Member verbally abused and bullied the employee and subjected the employee’s father to abuse and provocation.

The Ombudsman concluded that the Member used abusive and offensive language towards the employee in front of other members and the employee’s father, in an attempt to insult, belittle and undermine the employee. The Ombudsman concluded that the Member’s actions were suggestive of bullying and provocation.

The Ombudsman determined that the Member’s behaviour may have breached the Council’s Code of Conduct, in particular 4(b) and 4(c) in a failure to show respect and consideration to others, and not to use bullying behaviour. The Ombudsman also found that the Member’s conduct could reasonably be regarded as behaviour which might bring the office of Member of the Council into disrepute and was therefore also suggestive of a breach of 6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Vale of Glamorgan Council for consideration by its Standards Committee.

The Member resigned shortly before the Standards Committee Hearing. The Standards Committee of Vale of Glamorgan Council determined that the Former Member had breached

paragraphs 4(b), 4(c) and 6(1)(a) of the Code of Conduct and the Former Member received a censure

### **Promotion of equality and respect: Pembrokeshire County Council**

Report date

**08/10/2021**

Subject

**CODE : Promotion of equality and respect**

**CODE - Discontinued**

Relevant body

**Pembrokeshire County Council**

The Ombudsman received a complaint that a Member (“the Member”) of Pembrokeshire County Council (“the Council”) had failed to observe the Code of Conduct for Members. It was alleged that the Member had made threatening comments about a member of the public, which could have brought the Council into disrepute. The Ombudsman decided to discontinue the investigation because the investigation established that the comments were made wholly in the Member’s personal capacity and the tone and comments exchanged with the member of the public who made the complaint were of a similar tone and content to those the Member had made. In view of this, the Ombudsman concluded that it was no longer in the public interest for him to continue the investigation.

### **Promotion of equality and respect: Llanvaches Community Council**

Report date

**14/03/2022**

Subject

**CODE : Promotion of equality and respect**

**CODE - No evidence of breach**

Relevant body

**Llanvaches Community Council**

The Ombudsman received a complaint that a Member (“the Member”) of Llanvaches Community Council (“the Community Council”) had breached the Code of Conduct (“the

Code”) regarding matters concerning a boundary dispute, work conducted by a Tree Surgeon and the disclosure of confidential information.

The Ombudsman investigated whether the Member’s conduct may amount to a breach of paragraphs 4(b), 4(c), 5(a), 6(1)(a) and 7(a) of the Code of Conduct (“the Code”).

The Ombudsman obtained documents which demonstrated that the boundary dispute had been resolved, and the Member had declared an interest and not been involved in, or sought to influence, the Community Council’s decision regarding a formal request to plant saplings on the boundary. Interviews were undertaken with the complainant, the Tree Surgeon, and another Community Council Member. The Ombudsman found that the Tree Surgeon had removed branches from a tree on Community Council leased land without authorisation, the Member had a legitimate reason to question the work being carried out, and he had not used abusive or offensive language. During the investigation it was established that the disclosure of confidential information was being considered as part of another complaint.

The Ombudsman did not consider that the Member’s conduct concerning the boundary dispute or towards the Tree Surgeon was suggestive of a breach of the Code. However, he recommended that the Member should reflect on how he speaks about others and on his obligations under the Code to treat others with respect and consideration.

## **Promotion of equality and respect: Bishton Community Council**

Subject

**CODE : Promotion of equality and respect**

Report type

**CODE - No action necessary**

Relevant body

**Bishton Community Council**

The Ombudsman received a complaint that a Former Member (“the Member”) of Bishton Community Council (“the Community Council”) had breached the Code of Conduct). It was alleged that the Member had been rude to the Clerk in a Council meeting, had ignored a request not to contact the Clerk and in doing so had bullied and harassed him. It was also alleged that the Member had failed to declare an interest in a settlement proposal.

The investigation considered the following paragraphs of the Code of Conduct:

4(b) – members must show respect and consideration for others

4(c) – members must not use bullying behaviour or harass any person

11 – disclosure of personal interests

14 – disclosure of prejudicial interests

During the course of the investigation, information from the Community Council was considered and witnesses were interviewed. The Member stood down from his role and did not participate in the investigation.

The investigation found that the Member had raised his voice to the Clerk at a meeting and offered a limited apology for his behaviour. It found that the Member did send an email to the Clerk but that this was a reply all email and at the time it was sent, a process was in place that all correspondence to the Clerk was being forwarded to the Chair. The investigation also found that the Member participated in the settlement proposal and agreement for the Clerk.

The Ombudsman considered that the Member's behaviour at the meeting and in an email was suggestive of a breach of paragraph 4(b) of the Code of Conduct but was not sufficiently serious that it would warrant any interference with his right to raise concerns about the Council's administration or that it was likely a sanction would be imposed upon him. The Ombudsman did not consider the behaviour was sufficiently serious that it was suggestive of a breach of paragraph 4(c) of the Code of Conduct.

The Ombudsman considered that, in respect of the settlement, the Member's actions were suggestive of a breach of paragraphs 11 and 14 of the Code of Conduct. However, the settlement was the outcome desired by the Clerk and as such did not disadvantage him. The vote to approve the settlement would still have been carried as it was agreed unopposed. As the Member was no longer in post and relationships in the Community Council have improved the Ombudsman did not consider that it was in the public interest to take any further action in respect of that matter.

The Ombudsman found that under Section 69(4)(b) of the Local Government Act 2000, no action needed to be taken in respect of the matters investigated.

### **Promotion of equality and respect: Montgomery Town Council**

Report date

11/05/2022

Subject

CODE : Promotion of equality and respect

CODE - No evidence of breach

Relevant body

Montgomery Town Council

The Ombudsman received a complaint that a Member (“the Member”) of Montgomery Town Council (“the Town Council”) breached the Members Code of Conduct (“the Code”) by failing to show respect and consideration for others, bullying and harassment of the Former Clerk and members of the Town Council, and malicious and vexatious complaints.

The Ombudsman investigated whether the Member’s conduct may amount to a breach of paragraphs 4(a), 4(b), 4(c), and 6(1)(a) of the Code.

The investigation found that the Town Council had experienced challenging interpersonal issues over a period of time and previous to the complaint, had undergone a Local Resolution process which identified corporate and individual situations requiring change and improvement. The Ombudsman considered that in the light of the Local Resolution findings and the Member’s right to freedom of expression as a councillor, the alleged conduct was not suggestive of a breach of the Code. The Ombudsman did not consider that complaints made by the Member had been malicious or vexatious.

The Ombudsman’s Guidance recommends that when members are performing their public roles, they should afford the public, colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. In view of this, the Ombudsman recommended that members of the Town Council, as a whole, should reflect on their obligations under the Code to treat others with respect and consideration

### **Promotion of equality and respect: Tywyn Town Council**

Report date

17/12/2021

Subject

CODE Promotion of equality and respect

Referred to Standards Committee

Relevant body

Tywyn Town Council

The Ombudsman received a complaint from the Chair of the Personnel Committee of Tywyn Town Council (“the Council”) that a Member (“the Member”) of the Council had failed to observe the Council’s Code of Conduct for Members.

It was alleged that the Member had been disrespectful to the Clerk of the Council (“the Clerk”) and had repeatedly undermined her. The complaint related to correspondence sent by the Member to the Clerk and correspondence sent by the Member about the Clerk.

The Ombudsman concluded that the Member’s correspondence included derogatory personal comments which were disrespectful and that comments about the Clerk’s experience were intended to undermine the Clerk. The Member also used gendered language when commenting on the Clerk.

The Ombudsman determined that the Member may have breached the Council’s Code of Conduct, in particular, paragraphs 4(a), 4(b) and 4(c) as the Member failed to carry out their duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender; a failure to show respect and consideration, and bullying or harassing behaviour of the Clerk. The Ombudsman also found that the Member’s actions could reasonably be regarded as behaviour which might bring the office of Member or the Council into disrepute and a potential breach of paragraph (6(1)(a) of the Code of Conduct.

The Ombudsman referred his investigation report to the Monitoring Officer of Gwynedd Council for consideration by its Standards Committee.

The Standards Committee censured Councillor Stevens as he resigned from the Council prior to the hearing. It said it would have suspended him for the fullest period possible and asked him to reflect on his behaviour.

[Disclosure and registration of interests: Grovesend and Waungron Community Council](#)



Report date

01/04/2022

Subject

CODE : Disclosure and registration of interests

Report type

CODE - No action necessary

The Ombudsman received a complaint that a Member (“the Member”) of Grovesend and Waungron Community Council (“the Community Council”) had breached the Code of Conduct. It was alleged that the Member had failed to declare a personal and prejudicial interest when considering a planning application for a housing development adjacent to their property. It was also alleged that, when work started on the housing development, the Member hindered lorries from entering the site and threatened the development contractor with a solicitor’s letter, saying she was acting on behalf of the Community Council.

The investigation considered the following paragraphs of the Code of Conduct:

6(1)(a) – Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

7(a) – Members must not, in their official capacity or otherwise, use or attempt to use their position improperly to advantage or disadvantage themselves or any other person.

11 – Members must disclose the existence and nature of a personal interest before participating in any business of their authority to which it relates.

14 – Members must, unless they have obtained dispensation from their authority’s standards committee, withdraw from a meeting which is considering any business of their authority in which they have a prejudicial interest and not seek to influence a decision about that business

During the course of the investigation, information from the Community Council and the development contractor was considered and witnesses were interviewed.

The investigation found that when the planning application came before the Community Council as part of a consultation process the Member was advised incorrectly that she did not need to declare an interest. The Ombudsman found that as the Member lived adjacent to the housing development and ran a business from her property, it was likely that she had both a

personal and prejudicial interest in the planning application, and, therefore, she may have breached paragraphs 11 and 14 of the Code of Conduct.

The investigation found that whilst the Member may have influenced other members at the meeting, the Community Council as a whole submitted its objections to the planning application. However, the planning application was ultimately agreed by the County Council, and the development went ahead. Therefore, the Member's participation and the objection to the planning application from the Community Council did not cause a disadvantage to the applicant. The Ombudsman also considered that the evidence gathered during the investigation did not support the allegation that the Member had hindered lorries and threatened the contractor with a solicitor's letter or suggested that the Member had used her position improperly or brought her office as a member or the Community Council into disrepute in breach of paragraphs 6(1)(a) or 7(a) of the Code of Conduct.

The Ombudsman determined that the incorrect advice provided some mitigation for the Member's actions and, as the conduct did not affect the outcome of the planning application, it was unlikely a sanction would be imposed, and it was not in the public interest to pursue the matter. The Ombudsman therefore found that under Section 69(4)(b) of the Local Government Act 2000 no action needed to be taken in respect of the matters investigated.

### **Disclosure and registration of interests: Conwy Town Council**

Report date

12/05/2021

Subject

CODE : Disclosure and registration of interests

CODE - Discontinued

An Officer of Conwy Town Council complained that a Member had breached the Code of Conduct for Members when they failed to declare a personal and prejudicial interest in Council business and leave the room while that business was discussed at two Conwy Town Council meetings. The Member had previously been suspended for one month by the Standards Committee for similar conduct.

The Ombudsman considered whether the Member may have breached paragraphs 6(1)(a), 11(1), and 14(1)(a)(ii) of the Code of Conduct.

The Member resigned from Conwy Town Council during the course of the Ombudsman's investigation. The Ombudsman decided to discontinue the investigation as it was no longer in the public interest to pursue the matter further.

### **Disclosure and registration of interests: Conwy Town Council**

Report date

12/05/2021

Subject

CODE : Disclosure and registration of interests

Outcome

CODE - Discontinued

An Officer of Conwy Town Council complained that a Member had breached the Code of Conduct for Members when they failed to declare a personal and prejudicial interest in Council business and leave the room while that business was discussed at two Conwy Town Council meetings. The Member had previously been suspended for one month by the Standards Committee for similar conduct.

The Ombudsman considered whether the Member may have breached paragraphs 6(1)(a), 11(1), and 14(1)(a)(ii) of the Code of Conduct.

The Member resigned from Conwy Town Council during the course of the Ombudsman's investigation. The Ombudsman decided to discontinue the investigation as it was no longer in the public interest to pursue the matter further.

### **Duty to uphold the law: Llansantffraed Community Council**

Report date

24/06/2022

Subject

CODE : Duty to uphold the law

CODE - Referred to Standards Committee/APW

The Ombudsman received a complaint that a Member (“the Member”) of Llansantffraed Community Council (“the Council”) had breached the Code of Conduct. It was alleged that the Member was involved in an incident with a Council contractor (“the Contractor”), following which there was a Police investigation. The Member subsequently pleaded guilty to a charge of causing bodily harm by wanton and furious driving. The investigation considered whether the Member failed to comply with the following provision of the Code of Conduct:

- 6(1)(a) – Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

A witness account was obtained from the Clerk and information was obtained from the Police and the Court. The Member declined to cooperate with the Ombudsman’s investigation. The investigation found that the nature of the criminal offence involving the Council’s Contractor, the impact upon the young boys hurt in the incident, and the publicity surrounding the incident, which referred to the Council, suggested that the Member’s actions may have brought her office and the Council into disrepute and were suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct. The report on the investigation was referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal.

The Tribunal concluded that the Member had breached paragraph 6(1)(a) of the Code of conduct by bring their office as Councillor into disrepute. Accordingly, the Tribunal decided that the member should be disqualified for 12 months from being or becoming a member of the authority or of any other relevant authority.

### **Duty to uphold the law: Bodelwyddan Town Council**

Report date

06/09/2021

Subject

CODE : Duty to uphold the law

CODE - No action to be taken

Relevant body

Bodelwyddan Town Council

The Ombudsman received a complaint that a Member (“the Member”) of Bodelwyddan Town Council (“the Council”) had breached the Code of Conduct (“the Code”) when they shared confidential CCTV images on the Council’s Facebook page in a post published in March 2021.

The Ombudsman investigated whether the Member's actions may have amounted to a breach of paragraphs 5(a) and 6(1)(a) of the Code.

The Ombudsman obtained relevant information from the Council and considered the Member's comments. The Ombudsman found that the Member had published a mostly obscured image from the Council's CCTV footage on the Council's Facebook page. As the CCTV images should reasonably be considered to be confidential and should not be shared publicly in this way, the Ombudsman considered that the Member's actions may be capable of amounting to a breach of paragraphs 5(a) and 6(1)(a) of the Code.

However, the Council had provided no training on the Code, the use of its social media, or the use of its CCTV to the Member. Moreover, the Council had no policies or procedures in place in relation to the use of its social media or the use of its CCTV. The Member had also apologised to their fellow Council members and removed the image quickly when requested. The Ombudsman therefore did not consider any further action to be necessary. He did, however, suggest that the Member seek training on the Code as soon as possible and that the Council should promptly consider whether it has appropriate CCTV, data protection, and social media policies and/or procedures in place.

### **Duty to uphold the law: Langstone Community Council**

Report date

**08/06/2022**

Subject

**Duty to uphold the law**

**CODE - No action necessary**

Relevant body

**Langstone Community Council**

The Ombudsman received a complaint that a Former Member ("the Former Member") of Langstone Community Council ("the Community Council") had breached the Code of Conduct. It was alleged that the Former Member was violent and abusive during an altercation outside the complainant's property. It was also alleged that the Former Member operated an illegal waste disposal business on his property.

The Ombudsman's investigation found that whilst an Enforcement Notice for an alleged breach of planning control had been served against the Former Member, there was no evidence to suggest the Former Member's involvement in any official capacity in planning

affairs and the matter related to the Former Member's private capacity alone. In addition, the Former Member had an ongoing appeal against the Enforcement Notice, which had not been determined. The investigation also found there was historic animosity between both parties and that, during the altercation, both had used expletives and provocative behaviour, which culminated in the Former Member throwing a punch and the matter being reported to the Police. The Police did not take further action and the Former Member stepped down from the Council during the investigation.

The Ombudsman considered that the Former Member's conduct was suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct and may have brought his office as member or the Community Council into disrepute. However, the Ombudsman also considered that as the matter was not sufficiently serious for the Police to take action, and the Former Member was no longer a councillor, it was unlikely that a sanction would be imposed, and it was not in the public interest to pursue the matter. The Ombudsman therefore found that under Section 69(4)(b) of the Local Government Act 2000 no action needed to be taken in respect of the matters investigated.

### **Selflessness and stewardship: Newport City Council**

Report date

**13/07/2021**

Subject

**CODE : Selflessness and stewardship**

**CODE - Referred to Standards Committee/APW**

Relevant body

**Newport City Council**

The Ombudsman received a complaint from the Practice Manager of a GP Practice ("the Practice") in the area of the Aneurin Bevan University Health Board ("the Health Board"), that a Member ("the Member") of Newport City Council had failed to observe the Code of Conduct for Members.

It was alleged that the Member used their position as a member of the Council improperly when they advocated on behalf of a patient of the Practice.

The Ombudsman concluded that the Member had made 2 telephone calls to the Practice in which she sought to improperly rely on her position as a Member of the Council, and as a Council representative on the Health Board, in order to speak to an on-call doctor about the

patient's healthcare. The Ombudsman also concluded that the Member had made a complaint to the Health Board containing information which was critical of the Practice staff and did not accurately reflect the content of the telephone conversations. The Ombudsman was of the view that the complaint was an attempt by the Member to use their position to undermine the actions of the Practice and create a disadvantage for it.

The Ombudsman therefore determined that the Member may have breached paragraph 7(a) of the Council's Code of Conduct for Members and referred his investigation report to the Monitoring Officer of Newport City Council for consideration by its Standards Committee.

The Standards Committee concluded that the Member had breached paragraph 7(a) of the Code of Conduct and suspended her for 3 months. It also recommended to the Council that she be removed from her position on the Health Board.

Tudalen wag





## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

#### **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. RECOMMENDATIONS**

- 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 out 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/008/2021-022/CT – Former Councillor Paul Dowson  
(Pembrokeshire County Council)

Appendix 2 – APW/009/2021-022/CT – Former Councillor Caryl Vaughan  
(Llansantffraed Community Council)

Appendix 3 – APW/0010/2021-022/CT – Former Councillor Gordan Lewis  
(Pencoed Town Council)

- 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**

**18 NOVEMBER 2022**

**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)

Tudalen wag

**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**NOTICE OF DECISION**

**TRIBUNAL REF. NO. APW/008/2021/022/CT**

**RE: REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT**

**Respondent:**

Former Councillor Paul Dowson

**Relevant authorities concerned:**

Pembrokeshire County Council

**Representation and attendance:**

Respondent: Did not attend and was not represented.

PSOW: Ms K Shaw, counsel (with Mr L McAndrew, PSOW investigator);  
Mr J. Harries, Interim Deputy Monitoring Officer

1. A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.
2. At a hearing on 22<sup>nd</sup> August 2022, the Case Tribunal found by unanimous decision that Former Councillor Paul Dowson failed to comply with the Pembrokeshire County Council Code of Conduct as follows:
  - 2.1 The Case Tribunal found that in 2020, the Respondent falsely and publicly accused Cllr Beynon of sharing a pornographic video of a girl under the age of 17, something which is factually untrue. In doing so, he brought his office and his Authority into disrepute contrary to paragraph 6(1)(a) of the Code of Conduct. When the Respondent later repeated and insinuated those false allegations, he bullied Cllr Beynon, contrary to paragraph 4(c) of the Code of Conduct.
    - 2.1.1 Between September 2020 and February 2021, the Respondent falsely and publicly accused Marc Davies of being an ex-offender, something which is factually untrue. The Respondent repeated the allegations against Mr Davies between September 2020 and February 2021 despite having been informed by Mr Davies in September 2020 that he was referring to a different person. Former Councillor Dowson chose not to act on this information until February 2021 when he then apologised and accepted that they were untrue. In doing so, he brought his office and his Authority into disrepute contrary to paragraph 6(1)(a) of the Code of

Conduct. When the Respondent repeated those false allegations, he harassed Mr Davies, contrary to paragraph 4(c) of the Code of Conduct.

- 2.2 The Case Tribunal found that the Respondent misinformed people when he posted online that the Welsh Government's Relationships and Sex Education curriculum aims to teach 3-year-old children about masturbation; and to teach 13-year-old boys and girls about anal sex. He repeated this misinformation in an email to a fellow Member of The Council when he also said that lesson plans for 11-year-olds and upwards contained reference to bondage, anal sex, facial ejaculation and more. There was no basis for these statements. In making them, the Respondent wilfully misinformed people. In doing so, he brought his office and his Authority into disrepute contrary to paragraph 6(1)(a) of the Code of Conduct.
- 2.3 The Case Tribunal found that on 12<sup>th</sup> April 2021, the Respondent engaged in a conversation on Facebook with a member of the public called Timothy Brentnall, who at the time was using the name "Timothy St John". At one point in the conversation, the Respondent replied to Mr Brentnall with words which included "...I heard you are on the register but it's not been proven so I'm not spreading it around. Better man than you". In doing so, the Respondent falsely suggested that Mr Brentnall was subject to registration as a sex offender, to seek to discredit him in a wilful and harmful way. In doing so, he brought his office and his Authority into disrepute contrary to paragraph 6(1)(a) of the Code of Conduct.
- 2.3.1 The Case Tribunal found that the Respondent provided a fabricated exhibit to the PSOW's investigation in a deliberate attempt to mislead that investigation. In doing so, he brought his office and his Authority into disrepute contrary to paragraph 6(1)(a) of the Code of Conduct.
3. The Case Tribunal decided by unanimous decision that Former Councillor Paul Dowson should be disqualified for three years from being or becoming a member of Pembrokeshire County Council or of any other relevant authority within the meaning of the Local Government Act 2000, with effect from the date of this notice.
4. The Respondent has the right to seek the leave of the High Court to appeal the above decision.
5. Pembrokeshire County Council and its Standards Committee are notified accordingly. The full decision report will be published on the APW website in due course.

**TOM MITCHELL**

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Chairperson of the Case Tribunal

**SUSAN HURDS**

.....

Panel member

**DEAN MORRIS**

.....

Panel member

**22<sup>nd</sup> August 2022**

Tudalen wag



**PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES**

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/009/2021-22/CT

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

**RESPONDENT:** Former Councillor Caryl Vaughan

**RELEVANT AUTHORITY(IES):** Llansantffraed Community Council

(Principal authority – Ceredigion County 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 As former Cllr Vaughan did not respond to the Public Services Ombudsman for Wales' ("the Ombudsman") reference, the Tribunal determined its adjudication by way of written representations and the evidence available to it at a meeting on 24 June 2022 by virtual means as it considered it to be in the interests of justice to do so.
- 1.3 When the term "the Ombudsman" is used, it is a reference to either the previous Ombudsman (Mr Nick Bennett) or the current Ombudsman (Ms Michelle Morris) or their staff. During the course of this matter, the officeholder changed but it did not affect any substantive issue to be considered by the Tribunal. It does though explain the mixed use of "*he*" and "*she*" when referring to the Ombudsman in this decision.

**2. PRELIMINARY DOCUMENTS**

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

- 2.1.1 In a letter dated 7 March 2022, the Adjudication Panel for Wales ("APW") received a referral from the Ombudsman in relation to allegations made against former Cllr Vaughan. The allegations were that former Cllr Vaughan had breached Ceredigion County Council's Code of Conduct paragraph 6(1)(a), applicable to the relevant authority's members and co-opted members, by committing a criminal offence and her surrounding actions while holding the office of Councillor, and allegedly being responsible for the generation of

adverse publicity. The Ombudsman's position is that these actions breach the Code of Conduct and brought both the office of Councillor and Llansantffraed Community Council into disrepute.

- 2.1.2 The Case Tribunal declined to consider if paragraph 6(1)(b) of the Code of Conduct has been breached as initially indicated by the President following her review of the reference. The Case Tribunal unanimously concluded that as the provision referred to reporting the possible criminal conduct of "*another member*", if this provision was meant to deal with self-reporting, it should state this unambiguously.
- 2.1.3 The background to the reference is that former Cllr Vaughan signed her declaration of acceptance of office as a member of Llansantffraed Community Council on 7 May 2019. Three days later, on 10 May 2019, she was involved in an incident with the Council's Contractor (a private individual who will be referred to as "the Contractor"), in which she drove her car at speed on private land at the Contractor while he was undertaking his duties for the Council. Former Cllr Vaughan was acting in her private capacity at the time of the incident. Her car struck two minors during the incident; at least one suffered bodily harm. The evidence suggests the Contractor and the minors were distressed by what had occurred.
- 2.1.4 Police investigated the incident between Former Cllr Vaughan and the Contractor. She continued in her role as a Councillor after the incident and after pleading guilty to the offence. Former Cllr Vaughan was charged with causing bodily harm by wanton and furious driving contrary to Section 35 of the Offences against the Person Act 1861. Former Cllr Vaughan pleaded guilty to the offence on 14 October 2020. She was sentenced on 9 December 2020 to a suspended sentence of 10 weeks' imprisonment, and her driving licence was endorsed with 8 penalty points; she was also required to pay a victim surcharge of £128. The sentence fell short of automatic disqualification from the office of councillor (Section 80A of the Local Government Act 1972 says that a sentence of three months or more disqualifies a person from the office of councillor).
- 2.1.5 Former Cllr Vaughan's sentencing attracted local media interest. She continued in her role as a Councillor after her sentencing. Former Cllr Vaughan resigned from the Council on 22 December 2020 after adverse media reports about the incident and her conviction. Former Cllr Vaughan sought advice from the Clerk, and did not report her own conduct to the Monitoring Officer or the Ombudsman. The other councillors also did not report her possible criminal offence to the Ombudsman, following advice from the Clerk which made no reference to the requirement to do so under paragraph 6(1)(b) of the Code.

## **2.2 The Councillor's Written Response to the Reference**

- 2.2.1 Former Cllr Vaughan did not respond to the reference. The only response received from her was to the Ombudsman in an email dated 18 November 2021, refusing to attend an interview:

*"I wish not to attend the interview as its a busy time for me with work commitments and unable to find time that would be adequate for the interview. I would like to draw a line underneath it all and move forward. I joined the parish council to have a young voice representing the village and after discussing with the clerk and other people was better to resign to avoid the interviews as for me would feel more pressure and would not be worth the worrying and stress."*

- 2.2.2 The Tribunal gave former Cllr Vaughan a further opportunity to make any submissions she wished to make to it by 23 May 2022; she failed to do so.

## **2.3 The Ombudsman's Written Representations**

- 2.3.1 In a letter dated 4 May 2022, the Ombudsman made further submissions. She referred the Tribunal to the report produced by her predecessor in relation to the facts and whether there was a breach of the Code of Conduct.
- 2.3.2 The additional submissions were regarding the action to be taken if a breach of the Code was found. The Ombudsman said that former Cllr Vaughan's alleged misconduct was serious and affected minors. She accepted that at the time of the offence, former Cllr Vaughan had only been a councillor for three days, but highlighted her failure to realise the seriousness and consequences of her actions, her failure to co-operate with the Ombudsman's investigation, the lack of remorse and reflection, and the media interest generated by her offence. The Ombudsman submitted that the appropriate sanction was disqualification, saying that such a sanction would be fair, proportionate and in the public interest to maintain confidence in local democracy.

## **3. FINDINGS OF FACT**

- 3.1 The Case Tribunal found the following **undisputed** material facts:
- 3.1.1 The matters outlined in paragraphs 2.1.3 to 2.1.5 were all undisputed and are found as facts.
- 3.2 There were no **disputed** material facts.

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

## **4.1 The Respondent's Submissions**

4.1.1 Former Cllr Vaughan made no submissions.

## **4.2 The Ombudsman's Submissions**

4.2.1 It was contended by the Ombudsman that former Cllr Vaughan did not resign after the event, and did not self-refer her actions for him to consider. It was pointed out that it was not until there was adverse local publicity, sometime after she was sentenced, that former Cllr Vaughan resigned her post; the Ombudsman submitted that this indicated a lack of recognition of the seriousness of her actions and the impact her behaviour and conviction might have on the reputation of her office and the Council. He said it raised also concerns about former Cllr Vaughan's fitness to hold public office.

4.2.2 The Ombudsman noted that the Clerk said that he did not advise former Cllr Vaughan whether she should make a self-referral to my office, but he did advise the Council as a whole that self-referral was an option. The Ombudsman accepted that this unclear advice from the Clerk could be seen as a mitigating factor. However, he remained of the view that given the nature of the criminal offence involving the Contractor, the impact upon the minors hurt in the incident, and the publicity surrounding the incident which refers to the Council indicated that former Cllr Vaughan's actions may have brought her office and the Council into disrepute. The Ombudsman submitted that a reference was necessary and in the public interest as currently former Cllr Vaughan could stand for re-election or be co-opted onto a relevant authority.

## **4.3 Case Tribunal's Decision**

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

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

4.3.3 The Case Tribunal found that former Cllr Vaughan's actions brought the office of councillor into disrepute, but not the Council itself. It considered it relevant at this point to make findings about the involvement of the Clerk to the Council and the nature of the adverse publicity in order to make its determination on this issue.

4.3.4 The Clerk to the Council, Mr Denfer Morgan, in the witness statement provided to the Ombudsman's investigation officer on 26 August 2021, said that he recalled mentioning the Ombudsman's complaints procedure to former Cllr Vaughan in case a complaint was made to the

Ombudsman after the incident that gave rise to the offence of which she was convicted. Mr Morgan said that he did not indicate to former Cllr Vaughan that he would make a reference to the Ombudsman (and he did not). Mr Morgan confirmed that some councillors had asked him about the complaints procedure, and he told them about it by email on or around 8 July 2020 and 15 December 2020. In his email to those members, the Tribunal noted that Mr Morgan failed to tell them about the requirements of paragraph 6(1)(b) of the Code and referred to a case where the accused councillor did not plead guilty and was found not guilty by a court.

- 4.3.5 Mr Morgan in his statement said that the advice he gave former Cllr Vaughan when her criminal case first went to court was not to refer the matter to the Ombudsman; he accepted that this advice was influenced by difficulties with the Contractor's contract with the Council. Mr Morgan explained that he and former Cllr Vaughan had discussed the options of self-referral, the possibility of a complaint and standing down from the office of councillor. Mr Morgan admitted that he told former Cllr Vaughan in a further discussion after her conviction in December 2020 that she would probably be found to have broken the Code of Conduct, so there was no reason for her to go through the Ombudsman's procedures and she should resign. Mr Morgan added that if former Cllr Vaughan had self-referred to the Ombudsman, or if a complaint was made against her and she remained in post as a Councillor, then taking part in an investigation would have been a strain on her.
- 4.3.6 It is evident that Mr Morgan did not inform the members of the Council of their obligation to report the possible criminal conduct of another member under paragraph 6(1)(b) of the Code, even after former Cllr Vaughan pleaded guilty. This omission is wholly unexplained, but it is not the responsibility of former Cllr Vaughan to give such advice. It is further the finding of the Tribunal that Mr Morgan and former Cllr Vaughan were aware that her criminal conduct was likely to be a breach of the Code by December 2020. Given that former Cllr Vaughan pleaded guilty in October 2020, the Tribunal finds that it is likely that former Cllr Vaughan knew much earlier, or should have known, that questions about the effect of her behaviour on whether she had breached the Code of Conduct arose. There is no evidence when Mr Morgan knew of the guilty plea, but his statement says he knew that she intended to plead guilty when the first court date was arranged.
- 4.3.7 Former Cllr Vaughan was not responsible for the advice given to her or the other councillors by Mr Morgan. However, the duty to comply with the Code cannot be delegated to another, including the clerk, by members. The advice given goes some way in the Tribunal's view to explaining why former Cllr Vaughan continued to serve in office and no reference or complaint was made to the Ombudsman at an earlier stage by either her or members of the Council.

- 4.3.8 The Tribunal turned to the alleged adverse publicity. The adverse press coverage disclosed consisted of four articles or letters to the press. One article was in Wales Online on 9 December 2020 headlined “*Farmer lost control of 4x4 moments after furious and 'pathetic' squabble about hedge*”. There was no reference to the Council or that former Cllr Vaughan was a serving councillor in this article. There was a video within the article showing how former Cllr Vaughan had driven. A letter from the parent of one of the minors involved was published in the Cambrian News, entitled “*18 months of hell for my family*” on 16 December 2020. This from the outset mentioned the office held by former Cllr Vaughan and the Council of which she was part, and that the Ombudsman would be receiving a complaint (though the letter writer did not make such a complaint). The third and fourth articles were also published on 16 December 2020 in Cambrian News and TruckerWorld. The article in the Cambrian News did not mention the Council or that former Cllr Vaughan was a serving Councillor. The Tribunal was told that there was an article in Aberystwyth Today on 16 December 2020, but a copy was not available and its contents are unknown.
- 4.3.9 The Tribunal observed from the emails of the Clerk that first contact by the media with the Council appeared to be on or around 8 July 2020. The Council was at that point aware of the likely public interest in the action of former Cllr Vaughan, and the email shows that she was made aware of the interest by the Clerk at that time.
- 4.3.10 The Tribunal found that it was not accurate to say that the adverse publicity regarding former Cllr Vaughan’s criminal act referred to her office as councillor or the Council. The only reference in the articles to the Council was to the Contractor working on its behalf. The only item that made any reference to the office of councillor or the actions of the Council was the letter from a family involved. The publicity generally did not bring the Council into disrepute; what left the Council vulnerable to criticism was its lack of action about former Cllr Vaughan and her continued presence as a councillor. The Code required the members to report the matter to the Ombudsman; the Clerk to the Council did not give the members this advice. Former Cllr Vaughan is not responsible for these failures or the negative publicity in the letter about the Council.
- 4.3.11 The Tribunal therefore focussed its attention on the criminal conduct of former Cllr Vaughan and her continued service on the Council after pleading guilty (and beforehand when she knew what she had done). The Tribunal reminded itself that paragraph 6(1)(a) expressly applies to conduct undertaken in a personal capacity. The case of Livingstone v Adjudication Panel for England [2006] EWHC 2533 (Admin) could not be directly translated into the legal position in Wales where the legislation and the mandatory provisions of the Code sets out in the relevant Welsh Regulations had, by clear wording, spelt out that Paragraph 6(1)(a) extended to a member’s conduct “*at all times and in any capacity*” under paragraph 2(1)(d).

- 4.3.12 The Tribunal considered that the act of driving a car by a councillor at a council Contractor and causing bodily harm to minors as a result, no less than a criminal act, in its own right brought the office held by that councillor into disrepute. The extent of the press coverage and whether it told readers of the office held by former Cllr Vaughan was to an extent irrelevant. What former Cllr Vaughan did was extraordinary and wholly inconsistent with the standard of behaviour for officeholders required by the Code and expected by the public. The public in particular was likely to view such unjustified and dangerous conduct as unacceptable, especially when it was directed at a council contractor undertaking work for the council of which former Cllr Vaughan was a councillor.
- 4.3.13 The Tribunal also considered that former Cllr Vaughan's decision to continue serving as a councillor after committing a criminal act of this nature and after pleading guilty to a serious criminal offence to be conduct bringing the office of councillor into disrepute. It ignored the Nolan principles and the wider Welsh public service principles. It was obvious from the evidence that former Cllr Vaughan only resigned, not because she felt any remorse or shame, but in order to avoid an investigation by the Ombudsman. The evidence of the Clerk demonstrated this. The likely view by the public of such conduct would be that former Cllr Vaughan had no regard or respect for the principles of public service, including integrity, openness, and leadership.

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

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

- 5.1.1 Former Cllr Vaughan made no submissions.

### **5.2 The Ombudsman's submissions**

- 5.2.1 The Ombudsman's submissions are recorded in paragraph 2.3 above.

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

- 5.3.1 The Case Tribunal considered all the facts of the case and in particular the seriousness of the breach of the Code of Conduct and former Cllr Vaughan's persistent failure to engage with either the Ombudsman or the APW.
- 5.3.2 The Case Tribunal concluded by unanimous decision that former Cllr Vaughan should be disqualified for 12 months from being or becoming a member of Llansantffraed Community Council or of any other relevant authority within the meaning of the Local Government Act 2000.
- 5.3.3 The Registrar confirmed to the Case Tribunal that the Monitoring Officer had written to say that there were no previous findings of a breach of the Code of Conduct by former Cllr Vaughan.

- 5.3.4 The Sanctions Guidance of the APW issued by the President came into effect from 1 September 2018. It remains in force and was considered by the Case Tribunal. It followed the five-step process set out in paragraph 33 of the Guidance. The Guidance reminded the Tribunal that it should apply the underlying principles of fairness, public interest, proportionality, consistency, equality and impartiality, and respect human rights.
- 5.3.5 The Tribunal first considered the seriousness of the breach and any consequences for individuals and/or the Council. Former Cllr Vaughan had committed a criminal offence, very shortly after becoming a councillor, and two minors had been hurt, though fortunately not significantly. In addition, the evidence shows that of greater impact was the emotional and traumatic consequences on a long-term basis. Their emotional balance, sleeping, and school attendance had been affected, and at least one had to visit a medical practitioner as a result. Flashbacks and nightmares have resulted from the offence. The Contractor himself was distressed, particularly about the effect on the minors involved and the potential consequences of former Cllr Vaughan's actions (that someone could have died). The actions of driving the car had been directed at a Contractor for the Council of which former Cllr Vaughan was a councillor at the time while he was undertaking work for the Council.
- 5.3.6 The Tribunal found that the breach of the Code through the actions of former Cllr Vaughan was particularly serious. It was fortunate that only minor bodily harm and trauma resulted; the Contractor or the minors could have been killed or suffered more serious injuries. The seriousness of former Cllr Vaughan's actions were compounded by her inability to see what she had done was wrong as shown by her statement to the police following the incident that *"no-one will make a complaint against me...my conduct is perfectly lawful"*. Former Cllr Vaughan continued in office after she pleaded guilty, which indicated a lack of insight and undermined the respect for the office in which she served, a potentially serious consequence for local democracy.
- 5.3.7 The Tribunal then considered the broad type of sanction that it considered most likely to be appropriate having regard to the breach. It bore in mind that as former Cllr Vaughan had resigned from her office, its options were limited to no action or disqualification; if former Cllr Vaughan was still in office, suspension would have been an option. The Tribunal noted that the sentence imposed on her was close to the level resulting in automatic disqualification. It also bore in mind the provision in paragraph 44 of the Sanctions Guidance:

*"If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."*



- 5.3.8 The Tribunal considered that the seriousness of the breach and former Cllr Vaughan's conduct was such that it rendered her entirely unfit for public office. It was satisfied that in broad terms, the appropriate sanction was likely to be disqualification.
- 5.3.9 The Tribunal turned to consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration. It has already noted that former Cllr Vaughan had only been in office for three days before she committed the criminal offence; it was unlikely that she had received any training regarding the Code of Conduct in such a short time. However, overall she had been in office for approximately 18 months, which would have given her an opportunity to attend such training.
- 5.3.10 The Tribunal also reminded itself of the advice given by the Clerk to the Council. Councillors are encouraged to seek the advice of the Clerk, who is meant to either advise or signpost councillors to the information they require, though this does not mean a councillor can delegate their own responsibility to comply with the Code to the clerk. However, in the view of the Tribunal, once former Cllr Vaughan decided to plead guilty to the offence and officially accept her culpability, it was for her to consider her position and whether she should self-refer to the Ombudsman. The conviction and the sentence did not result in her resignation. The Clerk's advice to resign was very late in the day and only after adverse publicity was generated about former Cllr Vaughan herself. The focus of that advice was about what was best for former Cllr Vaughan, not for the Council or the need to maintain confidence in local democracy. Mr Morgan failed to address the impact on the office of councillor and the council itself of a councillor who had been convicted of an offence continuing to serve without making a referral to the Ombudsman.
- 5.3.11 Former Cllr Vaughan's decision to remain in office without making a referral to the Ombudsman was in part explained by the advice she received from the Clerk, but her responsibility was not wholly expunged by this. The Tribunal considered the advice given by the Clerk to be a mitigating factor for former Cllr Vaughan but the failure to reflect for herself on her conduct and the lack of insight into her criminal act and the likely impact on the office of councillor and Council was viewed as an aggravating factor. Her conduct underlying the criminal conviction was in the view of the Tribunal "*deliberate or reckless conduct with little or no concern for the Code*" (paragraph 42 subsection x Aggravating factors, Sanction Guidance).
- 5.3.12 It was also an aggravating factor that former Cllr Vaughan resigned in the view of the Tribunal not because she had brought the office of councillor into disrepute or had behaved in a thoroughly reprehensible way towards the Contractor, but to avoid the Ombudsman's investigation (as shown by the Clerk's evidence). In addition, no apology to the Contractor or the minors has been given as far as the

Tribunal is aware, and former Cllr Vaughan chose not to co-operate with either the Ombudsman's investigation or these proceedings. The Tribunal concluded that former Cllr Vaughan's behaviour as a whole demonstrated no insight into or manifestation of the Nolan principles, despite her signed declaration that she would "*duly and faithfully fulfil the duties of it according to the best of my judgement and ability*" and comply with the Code.

5.3.13 The Tribunal considered any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of sanctions. It considered that no further adjustment was required and the appropriate sanction remained disqualification.

5.3.14 The Tribunal turned to consider the length of the disqualification period. It concluded unanimously that a period of 12 months was appropriate. It bore in mind other decisions of the APW where councillors had been disqualified, the seriousness of former Cllr Vaughan's breach and the need to maintain public confidence in local democracy. The Tribunal observed that cases where the period of disqualification exceeded 12 months tended to involve significant or extensive bullying and harassment or egregious conduct such as standing for election when already disqualified. It also bore in mind the events underlying the criminal conduct and the advice given to former Cllr Vaughan by the Clerk. If former Cllr Vaughan had remained in office but shown real remorse and insight, it was possible a sanction of suspension for 12 months would have been imposed. Taking all these matters into account, the Tribunal resolved on a 12-month disqualification period.

5.3.15 The Tribunal, having considered the above, confirms that its decision regarding the action to be taken is that former Cllr Vaughan is disqualified from holding public office in a relevant authority for a period of 12 months from 24 June 2022.

5.4 The relevant authority and the Standards Committee of the Principal Authority are notified accordingly.

5.5 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(s) to the authority:

6.1.1 That all current councillors of Llansantffraed Community Council attend training on the Code of Conduct within a period of three months from today (to be provided by the Monitoring Officer, her delegate, One Voice Wales or any other appropriate provider) to ensure that they understand these provisions, including paragraph 6(1)(b);

6.1.2 That Llansantffraed Community Council considers requiring the attendance at such training by the Clerk to the Council.

Signed: C Sharp

Date: 27 June 2022

Tribunal Judge C Sharp  
Chairperson of the Case Tribunal

Dr G Jones  
Panel Member

Mr D Morris  
Panel Member

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## **DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/0010/2021-022/CT

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

**RESPONDENT:** Former Councillor Gordon Lewis

**RELEVANT AUTHORITY:** Pencoed Town Council

### **1. INTRODUCTION**

- 1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales ('APW') considered a reference in respect of the above Respondent, which had been made by the Public Services Ombudsman for Wales ('the Ombudsman').
- 1.2 On 23<sup>rd</sup> March 2022, the Tribunal Registrar wrote to the Respondent in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, requiring a written acknowledgement to indicate whether he wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.
- 1.3 On 9<sup>th</sup> May 2022, the Case Tribunal issued Listing Directions which, amongst other matters, afforded the opportunity for the parties to apply for leave to attend or be represented at an oral hearing. Neither party lodged any application in this respect.
- 1.4 The Case Tribunal exercised its discretion accordingly to determine its adjudication on the papers only. The adjudication duly proceeded on 10<sup>th</sup> June 2022 and was conducted by means of remote attendance technology.

### **2. ALLEGATION**

- 2.1 By letter dated 17<sup>th</sup> March 2022, the Ombudsman made a referral to the APW and submitted his Report in relation to an Allegation made against the Respondent.

- 2.2 The Allegation was that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct for Members ('The Code') of Pencoed Town Council.
- 2.3 Paragraph 6(1)(a) states that a Member; - *'must not conduct [himself] in a manner which could reasonably be regarded as bringing [his] office or authority into disrepute.'*
- 2.4 The evidence was contained in the Tribunal Bundle which comprised of the Ombudsman's Report and linked correspondence.
- 2.5 The detail of the Allegation was summarised by the Ombudsman in his Report as follows. It was alleged that the Respondent had misled the Town Council as to his eligibility to be a Councillor and that his dishonesty, both when signing the declaration of acceptance of office and during the 1 year and 8 months that he acted as a Councillor, was a serious abuse of office. The Report stated that this went against the principles that underpin the Code. The Report went on to say that the Respondent did not engage with the investigation and did not give any explanation for his actions or show any remorse. The Ombudsman considered that the Respondent's actions were suggestive of a breach of paragraph 6(1)(a) of the Code.

### **3 PRELIMINARY LEGAL ISSUE**

- 3.1 The Listing Directions dated 9<sup>th</sup> May 2022 identified a preliminary legal issue which the Case Tribunal had to determine as follows: -

*'The Respondent and PSOW are invited to provide written submissions on the following question, which will be considered by the Case Tribunal as a preliminary issue. The question for consideration is whether an individual who is disqualified for being a Member is nevertheless subject to the Code of Conduct for Members...'*

- 3.2 The Respondent did not provide any submissions in response to this Listing Direction. The Ombudsman provided the following response by letter dated 30<sup>th</sup> May 2022: - *'The PSOW submits that an individual who is disqualified for being a member by reason of the provisions set out in Section 80 of the LGA 1972, and who nevertheless holds office as a member, is subject to the Code of Conduct for Members.'*

*In support of this view is Section 82(1) of the Local Government Act 1972, which states that "the acts and proceedings of any person elected to an office under this Act ... and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified". Also the decision in Islington LBC v Camp (1999) WL 33285549 (citing Bishop v Deakin (1936) Ch. 409) supports the position that a councillor who is disqualified who, nevertheless, holds office is validly appointed in that office as a member of the relevant authority and is effective in office as a member of the relevant authority. In view of this, we submit that a member who held a position as a member of the Council, whose membership of a council was valid and effective whilst acting as a*

*member, is subject to the Code of Conduct and the provisions and duties set out under Part III of the LGA 2000.'*

## **Legislation**

3.3 The Case Tribunal firstly considered the legislative background. The relevant statutory provisions referenced in connection with this case and the caselaw cited by the Ombudsman are as follows: -

### Local Government Act 1972

Section 80 - Disqualifications for election and holding office as member of a local authority.

*'... a person shall be disqualified for being elected or being a member of a local authority if he –*

*...(d) has within five years before the day of election or since his election been convicted...of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine...'*

Section 82 - Validity of acts done by unqualified persons.

*... 'The acts and proceedings of any person elected to an office under this Act...and acting in that office shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified.'*

Section 86 – Declaration by a local authority of a vacancy in office in certain circumstances.

*... 'Where a member of a local authority -(a) ceases to be qualified to be a member of the authority, or (b) becomes disqualified for being a member of the authority.... the authority shall, except in any case in which a declaration has been made by the High Court under this part of this Act, forthwith declare his office to be vacant'.*

Section 92 – Proceedings for disqualification

*... '(1) Proceedings against any person on the ground that he acted or claims to be entitled to act as a member of a local authority while disqualified for so acting within the meaning of this section may be instituted...in the High Court or a magistrates' court if that person so acted...but proceedings...shall not be instituted... after the expiration of more than six months from the date on which he so acted.'*

*(2) ...the High Court may - (i)...declare that the office in which the defendant has acted is vacant; (ii) grant an injunction restraining the defendant from so acting; (iii) order that the defendant shall forfeit...such sum as the court think fit, not exceeding £50 for each occasion on which he so acted while disqualified...'*

## **Caselaw**

3.4 The Case Tribunal carefully considered the caselaw to which the Ombudsman referred. The caselaw does not deal directly with the question of whether an individual disqualified for being a Member, yet acting as a Member, is nevertheless subject to the Code of Conduct for Members. It deals however with connected issue of the legal mechanisms which might be in place to deal with the situation where a disqualified person is elected to office. The caselaw does therefore provide some indication of the way in which the courts would view this particular set of circumstances.

### **Islington LBC v Camp (1999)**

3.5 The question arose as to whether, under the relevant provisions of the Local Government Act 1972, an individual was disqualified for being a member of a council by reason of her employment which was linked to the council and whether the council was entitled to declare the office to be vacant and trigger procedures for a by-election to fill the vacancy. These were different Section 80 grounds to those involving the Respondent.

3.6 There were discussions around election petitions, section 86 declarations (as above) and section 92 proceedings (as above) as means of resolving disqualification issues. The Judge stated that he would be greatly troubled by the idea that, where a disqualifying state of affairs existed at the time of a person's election as a councillor and continued thereafter, there could be no form of challenge to that person continuing to act as a councillor if no election petition had been brought within the short period available for such challenge.

3.7 The Judge acknowledged however that election rules did not provide a complete safeguard. He noted that a dishonest declaration might lead to a criminal conviction giving rise to a separate ground for disqualification, however that would provide only a limited safeguard, since a disqualifying circumstance might well exist even though a candidate made a declaration in good faith to the contrary effect. Ultimately in this case, it was found that there was no remaining legal mechanism which allowed the office of Member to be declared vacant.

### **Bishop v Deakin [1936] Ch 409**

3.8 This was an action to obtain a declaration that the defendant, who was acting as an elected councillor, was disqualified from acting, so that her office was deemed vacant. The same grounds for disqualification as for the Respondent were in play, albeit under predecessor provisions. The case dealt with the connected question of whether a relevant conviction and sentence prior to election disqualified a person for being a member [the Tribunal's emphasis] of a local authority, as well as from being disqualified for being elected.

3.9 The parties agreed that the election itself could only have been called into question by election petition and that opportunity had passed. The judge applied a 'disjunctive' construction to the particular provision. That is, conviction within five years *before* the date of election disqualified the individual only for election.



Conviction *after* election disqualified the individual for continuance in office only; so that a pre-election conviction was not a ground of disqualification for continuance in office [the Tribunal's emphasis].

3.10 It was therefore held that the defendant in this case, notwithstanding her disqualification for election, was not disqualified from acting as a member [the Tribunal's emphasis] of the local authority. The Judge stated that, even assuming he was wrong on this issue, he didn't consider that the declaration proceedings had been instituted within the necessary timescale.

### **Rex v Beer [1903] 2 K.B 693**

3.11 This case is referenced in the cases above and related to an individual who was disqualified for bankruptcy pre-election. A type of warrant was issued to remove the individual from holding the office of councillor in order for the office to be declared vacant. The conclusion Lord Alverstone C.J reached in the case was that this warrant remedy could still be relied upon.

3.12 Channell J stated; *"It is settled law that, if an office is full in fact, there cannot be a writ of mandamus to hold a [fresh] election on the ground of disqualification of the holder, at any rate not if the office is such that a writ of quo warranto would lie in respect of it, in which case it would be necessary to make use of that mode of procedure in order to get the holder out of the office before applying for a mandamus to hold a fresh election, and therefore we discharged the rule for mandamus, for whether Mr Beer is qualified to hold the office of councillor or not, he is the holder de facto."* [the Tribunal's emphasis].

### **The Case Tribunal's decision on the Legal issue**

3.13 The settled case-law therefore recognises that disqualification under Section 80(1)(d) does not automatically lead to the removal of the status of 'Member'. Indeed, it recognises that an individual continues to act in that role de facto, unless a further step is taken to formalise that disqualification, for example by election petition or resignation. Due to the apparent disjunctive application of Section 80(1)(d) of the Local Government Act 1972, in cases such as the present one, in relation to a relevant conviction and sentence pre-election, the legislative remedies to prevent an elected, although disqualified Member from continuing to act, are very limited.

3.14 The Code definition of 'Member' does not further the debate. as it simply states; *'includes, unless the context requires otherwise, a co-opted member.'* The Case Tribunal has therefore applied the standard ordinary meaning of the word, being an individual who has been elected to be Member of the Relevant Authority and acts de facto in that capacity.

3.15 The Ombudsman submitted that Section 82 of the Local Government Act 1972 was also relevant. The Case Tribunal did not consider that Section 82 was determinative in this debate however. The fact that the actions of a disqualified Member are deemed to be valid and effective, does not in itself alter the status of the individual. The Case Tribunal nevertheless considered that this meant that a

disqualified individual's declaration of acceptance of office and undertaking to abide by the Code were in themselves capable of being valid and effective actions.

3.16 In summary, the Case Tribunal was satisfied that although the Respondent was disqualified from being elected to office under Section 80(1)(d), he nevertheless acted as a Member and there needed to be an intervening step to enable the 'de facto' position to be altered. In other words, prior to resignation, unless an election petition, or action under Sections 86 or 92 of the Local Government Act 1972 were available and had been pursued and successfully concluded, the de facto status as Member would remain.

3.17 In conclusion, the Case Tribunal determined that an individual who is disqualified for being a Member is nevertheless subject to the Code of Conduct for Members when continuing to act. The Respondent was elected as a Member and remained a Member within the ordinary meaning of the Code until the date of his resignation, despite his disqualification for being elected (but not necessarily from acting as Member as per the caselaw above.)

3.18 Accordingly, the Case Tribunal found that the Respondent was subject to the Code from the date of his election to the date of his resignation.

#### **4. FINDINGS OF FACT**

4.1 The Case Tribunal noted the following Undisputed Material Facts which were referenced in the Ombudsman's Report dated 17 March 2022.

4.2 The Listing Directions dated 9<sup>th</sup> May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Facts.

4.3 There being no further representations made as to these Undisputed Facts, the Case Tribunal considered the available evidence within the Tribunal Bundle. It found the following Material Facts on the balance of probabilities: -

4.3.1 The Respondent was convicted of three criminal offences in July 2015. He received a suspended prison sentence exceeding three months, without the option for a fine.

4.3.2 In November 2018, the Respondent was disqualified from being elected to the Town Council due to his criminal conviction.

4.3.3 The Respondent stood for election to the role of Member at Pencoed Town Council during November 2018.

4.3.4 The Respondent submitted a Nomination Pack that was accepted by the Returning Officer as a valid nomination on 19 November 2018. In doing so, he falsely claimed to be eligible to stand for election to the role of Member at Pencoed Town Council.

- 4.3.5 The Respondent was duly elected as Member of Pencoed Town Council and signed a Declaration of Acceptance of Office on 29 November 2018. In doing so, Pencoed Town Council was misled into believing he was eligible to do so.
- 4.3.6 The Respondent remained as Member for 1 year and 8 months, undertaking Council business, when he was not eligible for election.
- 4.3.7 An article was published in a national newspaper on 25 July 2020, which referenced the Respondent's criminal conviction.
- 4.3.8 Pencoed Town Council was not aware of the Respondent's criminal conviction until it appeared in a press article in July 2020.
- 4.3.9 The Respondent resigned from his role as Member on 31 July 2020.
- 4.3.10 A complaint was made to the Police that the Respondent had failed to declare a criminal conviction when standing for election. The Police did not take further action due to insufficient evidence as the consent to nomination paper had been destroyed by the Elections Service.
- 4.4. There are no Disputed Facts.

## **5. FINDINGS OF WHETHER THE MATERIAL FACTS AND EVIDENCE DISCLOSE A FAILURE TO COMPLY WITH THE CODE.**

- 5.1 The Listing Directions dated 9<sup>th</sup> May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to whether there had been a failure to comply with the Relevant Authority's Code.
- 5.2 There being no further representations made in this respect, the Case Tribunal considered the available evidence within the Tribunal Bundle as well as the Material Facts. It noted the Ombudsman's description of the following sequence of events; -
  - 5.2.1 On 16<sup>th</sup> July 2015, the Respondent was convicted of affray and two counts of common assault. He was sentenced to a total of 16 months imprisonment, suspended for 24 months.
  - 5.2.2 The Respondent stood for election to the role of Town Councillor at the Pencoed Town Council in November 2018. For his nomination to be valid, the Respondent was required to sign a Nomination Paper, which included the following declaration: *"For a nomination in Wales: I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000"*.
  - 5.2.3 The Nomination Paper explained that candidates must not sign the form if they were disqualified from standing and asked candidates to consent that they had

read the Electoral Commission's Guidance on standing for election, as well as the relevant legislation.

- 5.2.4 Part 1 of the Electoral Commission's Guidance set out the criteria that would render a member disqualified from standing for election. In line with paragraph 80(1)(d) of the 1972 Act, it said: *"You cannot be a candidate if at the time of your nomination and on polling day you have been sentenced to a term of imprisonment of three months or more (including a suspended sentence), without the option of a fine, during the five years before polling day"*.
- 5.2.5 The Respondent's Nomination Paper was accepted by the Returning Officer as a valid nomination on 19<sup>th</sup> November 2020. He was elected, unopposed, to the Town Council and signed a Declaration of Acceptance of Office on 29<sup>th</sup> November 2020, in which he undertook to abide by the Code.
- 5.2.6 On 25<sup>th</sup> July 2020 an article was published in the Daily Mirror, detailing the Respondent criminal conviction. The Police received a complaint but concluded that, as the Respondent's completed nomination form had been destroyed by Electoral Services, it could not as a consequence be confirmed that a crime had been committed, therefore no further action was taken.
- 5.2.7 On 31<sup>st</sup> July 2020 the Respondent resigned from the role of Member of Pencoed Town Council and stated that his resignation was to take immediate effect.

### **The Ombudsman's report submissions**

- 5.3 The Ombudsman stated that in order for the Respondent to be able to stand for election, he had to sign the relevant declaration. On the balance of probabilities, the Ombudsman considered that the Respondent had completed that declaration. In going on to also sign the Declaration of Acceptance of Office, he considered that the Respondent had misled the Town Council as to his eligibility to be a Member.
- 5.4 The Ombudsman considered that the Respondent's dishonesty, both when signing the Declaration of Acceptance of Office and during the 1 year and 8 months that he was serving as Member, was a serious abuse of office which went against the principles that underpin the Code of Conduct. He said that, as the Respondent had not engaged with the investigation, he had not given any explanation for his actions or shown any remorse.

### **The Case Tribunal's decision as to whether there was any failure to comply with the Code**

- 5.5 The Case Tribunal noted that the position was absolutely clear that the Respondent was disqualified for being a Member of Pencoed Town Council. It agreed that, on the balance of probabilities, as he had taken up office, he had signed the relevant election document to consent to his nomination. This was regardless of whether the remainder of the documentation had been completed on his behalf by a political group or the persons so nominating him. The Case

Tribunal noted that the relevant form included the following wording directly above the space for the candidate's signature; *"For a nomination in Wales: I declare that to the best of my knowledge and belief I am not disqualified for being elected by reason of any disqualification set out in, or decision made under, section 80 of the Local Government Act 1972 or section 78A or 79 of the Local Government Act 2000 (copies of which are printed overleaf)"*. It also noted that a full copy of Section 80 appeared on the next page of the election pack.

- 5.6 The Case Tribunal noted that the Electoral Commission booklet entitled *'Guidance for Candidates'* also included very clear guidance as to the circumstances in which individuals were disqualified for being elected. The Case Tribunal considered that, on the balance of probabilities, the Respondent had received a copy of this publication. The Guidance also provided clear instructions as follows; - *'The full range of disqualifications is complex and if you are in any doubt about whether you are disqualified, you must do everything you can to check that you are not disqualified before submitting your nomination papers. You must be sure that you are not disqualified as you will be asked to sign one of the required nomination papers to confirm that you are not disqualified. It is a criminal offence to make a false statement on your nomination papers as to your qualification for being elected, so if you are in any doubt, you should contact your employer, consult the legislation or, if necessary, take your own independent legal advice. The Returning Officer will not be able to confirm whether or not you are disqualified.'*
- 5.7 The Case Tribunal also noted that the Declaration of Acceptance of Office which the Respondent signed on 29<sup>th</sup> November 2020 included an undertaking to be guided by the Code in the performance of his functions in the office of Member.
- 5.8 Finally, the Case Tribunal were satisfied that the evidence showed that the Respondent had continued to act in the role of Member for the period 1 year and 8 months until his resignation in July 2020, despite being disqualified for being elected.
- 5.9 The Case Tribunal noted that the misleading *'Consent to Nomination form'* was signed before the Respondent became a Member and became subject to the Code. In view of the caselaw outlined above, the Case Tribunal also appreciated that although the Respondent was disqualified for being elected, he was not necessarily disqualified for being a Member, since his conviction and sentence occurred pre-election.
- 5.10 Despite the above, the Case Tribunal was nevertheless satisfied that the Respondent had been elected on a false premise and likewise that the signature of his Declaration of Acceptance of Office form, his undertaking to abide by the Code and his continuation in office also took place on the same false premise. It considered that the instructions and warnings in the Consent to Nomination form and Guidance to Candidates were so clear, that it was inconceivable that the Respondent was unaware of the fact that he was disqualified from being elected. It considered that his actions were either deliberate or were the result of extreme recklessness and that this deliberate or reckless behaviour continued throughout

his period of office. He either knew that the information he'd provided was false and misleading or was reckless as to that fact.

5.11 The Case Tribunal was satisfied in all the circumstances, that although other public law measures may not have been available to prevent a disqualified Member from acting or to bring the Respondent's de facto status as Member to an end, the Code was nevertheless binding upon the Respondent and he was not absolved from the usual remedies for breach of it. He signed his Declaration of Acceptance of Office and continued to act as Member for a considerable length of time following his election despite being disqualified for being elected. The Case Tribunal considered this to be conduct which could reasonably be regarded as bringing both the Respondent's Office and his Authority into disrepute.

5.12 The Case Tribunal also considered the matter in the light of the Nolan principles which underpinned the Code. It was satisfied that there was an expectation that local authority Members would act with integrity, act in accordance with the trust that the public placed in them, lead by example and act to promote public confidence in their role and in their Authority. The fact that the Respondent was disqualified from being elected and yet continued to act as Member went to the heart of public trust in democracy and undermined the Code and standards regime. The Respondent continued to deal with his constituents and act on a false premise and this constituted a clear breach of paragraph 6(1)(a) of the Code.

5.13 The Case Tribunal noted that the Respondent's conviction and sentence had been highlighted in the national press in July 2020. The conviction and sentence themselves were not a matter before the Case Tribunal, however it appears that this press reporting had uncovered the fact that the Respondent was disqualified for election. As the Respondent had been elected and had continued to act for 1 year and 8 months on a false premise, this would without doubt have attracted significant media and public attention and disquiet, which would inevitably bring both the office of Member and his Authority into disrepute.

5.14 On the basis of the Material Facts and evidence therefore, the Case Tribunal found by unanimous decision that the Respondent had failed to comply with Paragraph 6(1)(a) of the Code. It considered that he had conducted himself in a manner which could reasonably be regarded as bringing his office and Pencoed Town Council into disrepute.

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

6.1 The Listing Directions dated 9<sup>th</sup> May 2022 afforded the opportunity for the parties to make further written submissions to the Case Tribunal as to what action the Case Tribunal should take, assuming this stage of the proceedings was reached.

6.2 No submissions were made by or on behalf of the Respondent. The Ombudsman wrote in his letter dated 30<sup>th</sup> May 2022 as follows; *"The purpose of the sanctions regime is to provide a disciplinary response to an individual member's breach of the Code, place misconduct and sanction on public record, deter future misconduct on the part of others and foster public confidence in local democracy."*

*If the Case Tribunal finds a breach of the disrepute provision of the Code, the breach involving deliberate deception and dishonesty would amount to a serious breach of the Code and one which requires a significant disciplinary response to deter repetition and to safeguard confidence in public democracy. If proven, the circumstances of this case meet the Case Tribunal's Guidance for the most severe form of sanction of 'disqualification'.*

*The PSOW submits that the Respondent's conduct by acting as a councillor in the full knowledge that he was disqualified from doing so calls into question the Respondent's fitness for public office and is serious disreputable conduct. The Respondent's failure to engage with the investigation and adjudication process is also an aggravating factor.*

*The overriding public interest is such that, if proven, the Respondent's conduct suggests that the member is entirely unfit for public office and the PSOW respectfully submits that the Case Tribunal may consider disqualification to be the most appropriate form of sanction."*

6.3 The Case Tribunal considered all the facts and evidence. It also had regard to the Adjudication Panel for Wales current Sanctions Guidance. In particular it noted the public interest considerations as follows in paragraph 44; - *"The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact on terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction."*

6.4 The Clerk to the Tribunal notified the Case Tribunal that there had been no previously reported instances of breach of the Code of Conduct in relation to the Respondent.

6.5 The Case Tribunal considered that the breach was serious in nature as the conduct could reasonably be regarded as conduct which would seriously undermine the public's faith in the Code and the standards regime. As such, it considered that disqualification was an appropriate sanction.

6.6 It noted that the Member had been in office for a lengthy period of time and significant decisions were likely to have been made by the Authority during that period. The Respondent was likely to have participated and voted in such matters and to have received sensitive information in the role of Member, despite being disqualified from being elected. Section 80(1)(d) was in place for a reason, so that an individual would be disqualified for a substantial amount of time if s/he had been convicted and sentenced of certain offences. By nevertheless signing his Declaration of Acceptance of Officer and acting as a Member for 1 year and 8 months, the Case Tribunal considered this to be a matter which merited a significant period of disqualification under the standards regime.

6.7 The Case Tribunal recognised that the Code and standards regime was about upholding standards in public life and an individual being elected to be a Member without legitimacy and continuing to act thereafter seriously undermined democracy and could raise questions about the legitimacy and standing of all local authority Members. The Case Tribunal also noted that this may have denied a legitimate candidate who would otherwise have stood for election.

6.8 In the circumstances, in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a lengthy period of disqualification. It considered that such disqualification would uphold the deterrent effect so that individuals standing for election did so with solemnity, care and integrity.

### **Mitigating factors**

6.9 As the Respondent hadn't engaged with either the Ombudsman or the Adjudication Panel for Wales, it was unclear what, if any, mitigating factors he might wish the Case Tribunal to consider. The Case Tribunal nevertheless considered whether there were any relevant factors as indicated by the Sanctions Guidance. It noted that the Respondent had displayed a degree of recognition of the seriousness of the matter in view of his prompt resignation following press reporting, however there was no evidence of any real insight shown or evidence of any accompanying apology. It also noted the lack of checks and balances in the system which meant the issue was not identified at the outset.

### **Aggravating factors**

6.10 The Case Tribunal considered that the conduct which led to this train of events was either deliberate or reckless. It also noted that there would have been an element of personal gain or political gain in achieving the status of Member. The status was also enjoyed for a lengthy period of time. The Case Tribunal was satisfied that this involved an abuse of a position of trust. It was noted that, as well as the election form, the Declaration of Acceptance of Office and undertaking to abide by the Code were solemn documents that should have been completed with honesty, integrity and extreme care. The election form had an official statement which needed to be read and signed by the Respondent and which would clearly have consequences. Finally, there was no evidence that the Respondent had co-operated or engaged in any way with the Ombudsman's investigation nor indeed with this Tribunal process. The Case Tribunal considered that all of the above were aggravating factors.

6.11 In conclusion, the Case Tribunal considered that it needed to impose a lengthy period of disqualification to reflect the seriousness of the issue and to recognise that they considered that the Respondent was currently unfit to fulfil the office of Member. It considered that he would have caused significant difficulties and embarrassment for his Authority and made a mockery of the standards regime through his actions.

6.12 The Case Tribunal had regard to sanctions imposed in previous cases and to the principle that the sanction imposed should be the minimum necessary to



uphold high standards of conduct in public life and maintain confidence in local democracy. The nature and extent of the breach and the level of culpability of the Respondent in this case, together with the potential consequences of the breach upon democracy, placed this breach amongst one of the more serious cases. The disqualification needed to provide sufficient time for the Respondent to reflect on his conduct before contemplating re-entering local politics.

6.13 As the sanction was a penalty prescribed by law, the Case Tribunal considered that disqualification needed to be of a length which was proportionate in all the circumstances, bearing in mind the public interest and the need to uphold law and justice and to protect the reputation and rights of others in a democratic society.

6.14 The Case Tribunal also considered whether and how to adjust the sanction in order to achieve an appropriate deterrent effect and to maintain public confidence in the standards regime. It concluded by **unanimous** decision that Former Councillor Lewis should be **disqualified for 24 months** from being or becoming a member of Pencoed Town Council or any other relevant authority within the meaning of the Local Government Act 2000.

6.15 Pencoed Town Council and its Standards Committee are notified accordingly.

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

Signed C Jones Date 17 June 2022  
Chairperson of the Case Tribunal

S McRobie  
Panel Member

S Hurds  
Panel Member

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## RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2022 - 2023

STANDARDS COMMITTEE

18 NOVEMBER 2022

**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**

**18 NOVEMBER 2022**

**BACKGROUND PAPERS**

<b>APPLICATION FOR DISPENSATION - COUNTY BOROUGH COUNCILLOR M.POWELL</b>	<b>Officer to contact: Andy Wilkins</b>
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**Freestanding Matter**

Tudalen wag



## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

#### **GROUP LEADERS' DUTIES IN RESPECT OF STANDARDS OF CONDUCT**

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

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

To consider the arrangements to be put in place in order to comply with the new duties of political group leaders in relation to standards of conduct and corresponding new duties placed on standards committees (introduced by Part 4 of the Local Government and Elections (Wales) Act 2021, ('the 2021 Act').

##### **2. RECOMMENDATIONS**

The Committee is recommended to:

- 2.1 Approve the proforma Group Leaders Report, attached at Appendix 2, subject to any agreed amendments;
- 2.2 Authorise the Monitoring Officer, in consultation with the Chair, to make any agreed amendments to the proforma Group Leaders' Report following consultation with the Group Leaders and agree its completion and return prior to the Committee meeting scheduled to be held in March 2023;
- 2.3 Agree to consider the Group Leaders' Reports at the March 2023 Committee meeting;
- 2.4 Agree the frequency on which group leaders are to be asked to report to the Committee thereafter; and
- 2.5 Agree what training should be provided to assist group leaders to comply with their new duties.

### 3. **BACKGROUND**

- 3.1 The 2021 Act, Part 4 introduced certain changes to the statutory ethical framework (set under Part 3 of the Local Government Act 2000), which took effect from 5<sup>th</sup> May 2022. The legislative changes were previously reported to the Committee on 19<sup>th</sup> March 2021 and include:
- (i) New duties for leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by members of their group, and to co-operate with the standards committee in the discharge of its functions; and
  - (ii) New duties for standards committees to monitor the compliance of political group leaders with their new duties; and for advising and training (or arranging training) of political group leaders in relation to those duties (referred to in paragraph (i) above); and to submit an annual report to full Council.
- 3.2 In complying with the new duties, political group leaders and standards committees must have regard to any guidance issued by the Welsh Ministers.

### 4. **THE GROUP LEADERS' DUTIES**

- 4.1 The Standards of Conduct draft statutory guidance: [Consultation on the Local Government and Elections \(Wales\) Act 2021: standards of conduct statutory guidance](#) is attached at **Appendix 1** to this report. At its last meeting, on 16<sup>th</sup> March 2022, the Committee received a report on the draft statutory guidance on this topic issued for consultation and endorsed the consultation response submitted by the Monitoring Officer.
- 4.2 Key provisions of the draft statutory guidance were reported to the last Committee meeting and include the following:
- The purpose of the new provisions is 'to ensure leaders of political groups in principal councils, supported by standards committees, promote and maintain high standards of conduct by the members of their group'; and notes that they 'support the Welsh Government's wider commitment to equality and diversity in public life', within the context of other initiatives seeking to ensure councils 'demonstrate an open and welcoming culture to all' and promoting 'civil, constructive and respectful political discourse'.
- 4.3 The draft guidance makes clear that 'The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their



influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise.’ The draft guidance goes on to list a number of reasonable steps the group leader *may* undertake and warns that ‘A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code (see the Ombudsman’s Guidance).’

- 4.4 The Ombudsman’s Guidance on the Code of Conduct includes the following in this regard:

‘2.32 When considering whether a member’s conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Leader, an Executive Member of Committee Chair, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their authority into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their authority into disrepute.’

- 4.5 In relation to the duty for political group leaders to co-operate with the standards committee, the draft statutory guidance says that ‘Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group leaders should also report compliance with their duty to the standards committee. This can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Group leaders should also report any serious concerns about members’ behaviour which have not been remedied by informal actions, in line with the requirement in the Code for councillors to report breaches.’
- 4.6 The draft guidance on the standards committee’s new duty to monitor group leaders’ compliance with their duties correspondingly says that ‘a council’s political group leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. The standards committee should then consider each report and provide feedback to the group leaders.’
- 4.7 Monitoring Officers across Wales have discussed and refined a proforma Group Leaders’ Report, originally drafted by Flintshire CBC’s Monitoring Officer. This is reproduced at Appendix 2 for Member’s consideration. The Committee will note that the first section is to be completed by the Monitoring Officer’s staff prior to sending the form to each group leader for them to complete and return. The completed Group Leaders’ Reports will then be reported to the Committee for discussion.

- 4.8 It is proposed that a Group Leader's report be received on a biannual basis, subject to any feedback from Committee Members.
- 4.9 With regard to training for group leaders on their new duties, the draft guidance says 'At the start of each administration this should take place within six months of the election and be reviewed at least annually. As Monitoring Officer I included an overview of group leaders' new duties within the Code of Conduct training sessions delivered as part of the Member Induction Programme 2022, and further specific training sessions will be arranged in due course.
- 4.10 The Committee is recommended to consider the proposed arrangements to be put in place to comply with the new statutory duties in relation to political group leaders and standards of conduct. The Committee should note that the new statutory provisions in relation to its annual report to Council will, in future, require an assessment of group leaders' compliance with their new duties under the 2021 Act (as set out in this report) with effect from the Committee's Annual Report 2022/23, which is to be presented to Council as soon as reasonably practicable after the end of the Municipal Year.

## **5. LEGAL IMPLICATIONS**

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

## **6. CONSULTATION**

- 6.1 Group Leaders would be consulted on any arrangements agreed by the Committee in respect of the operation of the duty detailed in the report.

## **7. EQUALITY AND DIVERSITY IMPLICATIONS**

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

## **8. FINANCIAL AND RESOURCE IMPLICATIONS**

- 8.1 There are no direct financial implications arising from this report. Any costs of providing training and advice for political group leaders are to be met from the allocated budget.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

**REPORT OF MONITORING OFFICER**

**GROUP LEADERS' DUTIES IN RESPECT OF STANDARDS OF CONDUCT**

**BACKGROUND PAPERS**

**Freestanding Matter**

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

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OPEN CONSULTATION

# Consultation on the Local Government and Elections (Wales) Act 2021: standards of conduct statutory guidance

We want your views on guidance on duties set out under the Local Government and Elections (Wales) Act 2021.

A PDF download of this page will be available soon.

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# **Foreword by the Minister for Finance and Local Government**

Councils must be places where an open culture thrives and people are made to feel welcome and respected, whatever their background, in order to encourage a more diverse range of people to seek elected office in local government. Standards of behaviour are key to this, and all members have a responsibility to act in a manner which respects and values all people.

The provisions in the Local Government and Elections (Wales) Act 2021 support this culture by providing a new duty on the leaders of political groups to take steps to promote and maintain high standards of conduct of their members. The duty recognises those in positions of leadership and influence within a principal council should have responsibility for combating bullying and harassment amongst elected members and council staff, and must act as a positive role model. Among other things, this duty is designed to support our diversity in democracy agenda and actions in our Race Equality Action Plan.

The duty is not intended to be the panacea and will not cover everyone (particularly those members who do not belong to a group), but it is designed to be proportionate and helpful. Its aim is to prevent or stop inappropriate behaviour before it escalates into a breach of the Code of Conduct.

All of us in public life must demonstrate the highest standards of behaviour and respect, particularly with regard to equalities and diversity. This guidance provides advice on the new duties introduced to support this position.

**Rebecca Evans, MS**

**Minister for Finance and Local Government**

# Introduction

The Local Government and Elections (Wales) Act 2021 (“the 2021 Act”) provides a new and reformed legislative framework for local government elections, democracy, governance and performance.

This guidance sets out how leaders of political groups in principal councils should meet their duties contained in section 52A of the Local Government Act 2000 (“the 2000 Act”), inserted by section 62, of the 2021 Act, which relates to the promotion and maintenance of high standards of conduct by the members of the group.

Leaders of political groups must have regard to any guidance issued by Welsh Ministers in relation to the exercise of their functions under section 52A(2) of the 2000 Act.

The guidance is designed to support leaders of political groups understand and discharge their duties in relation to high standards of conduct, whilst recognising that they will wish to and should be encouraged to develop their own approach in line with their wider statutory obligations, local circumstances, and best practice.

This guidance specifically addresses the following duties:-

## **Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group**

Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

## **Duty to co-operate with the council’s standards committee (and any sub-committee) in the exercise of the standards committee’s functions**

Section 52A(1)(b) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions.

This guidance refers specifically to these duties on a leader of a political group, and sets out the expectations on how they will perform these duties. All of the duties apply from 5 May 2022. Leaders of a political group will be required to have regard to the guidance once the relevant duties come into force.

There are other provisions within Part 3 of the 2000 Act relating to standards committees, inserted by sections 62 and 63 of the 2021 Act. These aspects of the 2021 Act are also described in this guidance.

The guidance is set out as follows:-

**Chapter 1:** describes the policy context within which the duties are set and the purpose of the duties.

**Chapter 2:** explains the duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group.

**Chapter 3:** provides guidance on the duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions

**Chapter 4:** describes the functions of standards committees in relation to the new duties.

## **Chapter 1: Policy context and purpose of the duties set out in section 52A of the Local Government Act 2000**

### **Policy context**



Part 3 of the 2000 Act established a statutory framework to promote and maintain high standards of ethical conduct by members and employees of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), community council, fire and rescue authority, a national park authority and a Corporate Joint Committee subject to the draft Corporate Joint Committees (General) (Wales) Regulations 2022 being made.

The framework consists of the ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'), set out below:

- Selflessness
- Honesty
- Integrity and propriety
- Duty to uphold the law
- Stewardship
- Objectivity in decision-making
- Equality and respect
- Openness
- Accountability
- Leadership

These are included in the statutory Model Code of Conduct (as required under section 50 of the 2000 Act), which lays down 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 as well. It also guides members on the declaration and registration of interests. All elected members must give a written undertaking to observe the Code before they can take up office.

Building on the existing arrangements, section 62 of the 2021 Act inserts a new section 52A into the 2000 Act which places a duty on leaders of political groups within a principal council to promote and maintain high standards of conduct by members of their group. Group leaders are required to co-operate with the council's standards committee in the exercise of its general and specific functions for promoting high standards (see below).

Subsection (3) amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the 2021 Act to promote and maintain high standards of conduct by members of their group. A standards committee must also provide advice or provide or arrange training for group leaders on the new duty.

## **Purpose of the standards of conduct provisions**

The ethical standards framework in Wales aims to promote the observance of consistent standards of conduct by local government members. High ethical standards underpin and maintain public confidence in democratic governance and the decision making process. For any organisation to be effective it must respect diversity and treat everyone with respect. Engendering a culture within a principal council which embraces high standards of conduct, requires both local leadership and all elected members to accept responsibility for their actions both individually and collectively.

The standards of conduct provisions in the 2021 Act complement the existing statutory ethical framework and support the Code of Conduct process. The provisions are designed to ensure leaders of political groups in principal councils, supported by standards committees, promote and maintain high standards of conduct by the members of their group.

## **The wider environment in which the standards of conduct duties operate**

The standards of conduct provisions contained in the 2021 Act support the Welsh Government's wider commitment to equality and diversity in public life. Action has been taken through the Diversity in Democracy Programme to tackle the barriers which prevent individuals' active participation in local democracy. Within local government, and through the Welsh Local Government Association (WLGA), there has been a commitment to Diversity in Democracy, including councils signing Diverse Council declarations which seek, amongst other actions, to ensure councils 'demonstrate an open and welcoming culture to all'. Furthermore, the WLGA, working with the Local Government Association (LGA), Northern

Ireland Local Government association (NILGA) and the Scottish body, COSLA, has been promoting the Civility in Public Life programme, which seeks to promote civil, constructive and respectful political discourse.

The Race Equality Action Plan for Wales: An anti-racist Wales sets out a series of goals and actions designed to improve the outcomes for black, Asian and minority ethnic people in Wales. The Action Plan sets out a number of goals and actions for local government relating to its leadership and representation role. It recognises that a more diverse elected representation is good for decision making and likely to lead to decisions which reflect society as a whole.

## **Chapter 2: Duty to take reasonable steps to promote and maintain high standards of conduct by the members of the group**

### **Introduction**

This chapter of guidance should be read by a leader of a political group in a principal council to support the discharge of their duties in section 52A of the 2000 Act, to take reasonable steps to promote and maintain high standards of conduct by the members of the group. The guidance here reflects the minimum requirements, recognising that leaders are best placed to build on this to develop the detail of their own approach.

### **Definition of political groups and group leaders**

Section 52A(3) of the 2000 Act enables the Welsh Ministers to make provision in regulations about the circumstances in which (a) members of a county council or county borough council in Wales are to be treated as constituting a political group; (b) a member of a political group is to be treated as a leader of the group.

The Local Government (Committees and Political Groups) Regulations 1990, made under the Local Government and Housing Act 1989, currently governs the position in this respect, until such time as regulations passed under 52A(3) of the 2000 Act are made.

## New Duty

Section 52A(1)(a) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must take reasonable steps to promote and maintain high standards of conduct by the members of the group.

The duty does not make leaders of a political group accountable for the behaviour of their members as conduct must be a matter of individual responsibility. However, they do have a role in taking reasonable steps in maintaining standards, setting an example, using their influence to promote a positive culture, being proactive in promoting high standards of conduct in their group and addressing issues as soon as they arise.

Reasonable steps the group leader *may* undertake include:

- demonstrating personal commitment to and attending relevant development or training around equalities and standards;
- encouraging group members to attend relevant development or training around equalities and standards;
- ensuring nominees to a committee have received the recommended training for that committee;
- promoting civility and respect within group communications and meetings and in formal council meetings;
- promoting informal resolution procedures in the council, and working with the standards committee and monitoring officers to achieve local resolution;
- promoting a culture within the group which supports high standards of conduct and integrity;
- attend a meeting of the council's standards committee if requested to discuss Code of Conduct issues;
- work to implement any recommendations from the Standards Committee about improving standards;
- work together with other group leaders, within reason, to collectively support high standards of conduct within the council.

As set out in chapter 1, the purpose of the new duties is to build on and support a culture which is proactive, acts on and does not tolerate inappropriate behaviour. The Guidance from the Public Services

Ombudsman for Wales for members on the Code of Conduct provides advice on the Code and its requirements. It includes examples of cases considered by the Ombudsman and decisions reached by local standards committees and the Adjudication Panel for Wales which demonstrate behaviours which are unreasonable or inappropriate. Leaders of political groups and all members should have regard to the Ombudsman's Guidance, which can be accessed on the [Ombudsman's website](#).

The importance of attendance at training on the Code of Conduct has been highlighted by the Ombudsman and was raised under the independent review of the Ethical Standards Framework and Model Code of Conduct carried out by Richard Penn. Leaders of political groups should encourage all members in their group to read the Ombudsman's Guidance and any local guidance issued by the monitoring officer or standards committee and to take up any offer of training. They should also work constructively with standards committees and Monitoring Officers to identify the training requirements for themselves and for their group members.

It is essential that relationships with members are established which encourage them to raise issues with the group leader. The group leader has a significant role to play in creating a culture of trust and mutual respect in their group. Where issues arise, the importance of resolving low-level complaints at a local level has been raised by the Ombudsman and the independent Review of the Framework. Typically, these complaints are about alleged failures to show respect and consideration for others and the making of frivolous and low level complaints. The group leader should be pivotal in preventing the escalation of these complaints to the stage where more formal interventions become necessary. Leaders of political groups should have informal discussions with members who may be showing early signs of inappropriate behaviour to 'nip this in the bud' before it becomes problematic or in danger of breaching the Code. This may include suggesting and requesting training for the members concerned, asking for social media posts to be removed, and requesting apologies where appropriate.

A leader of a political group who fails to comply with the new duty in a meaningful way, may potentially be regarded as bringing their office into disrepute, and likely to be in breach of the Code (see the Ombudsman's Guidance).

A political group's internal disciplinary procedures remain a matter for that group or any associated political party's own rules on discipline. However, it is expected that the group leader will take reasonable steps to promote and maintain high standards of conduct by members within group communications and meetings as well as their 'public' conduct outside of the group setting.

## **Chapter 3: Duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions**

### **Introduction**

This chapter of guidance is about the duty to co-operate with the council's standards committee (and any sub-committee) in the exercise of the standards committee's functions within section 52A of the 2000 Act.

The duties will come into force from the start of the next local government electoral cycle, on 5 May 2022.

### **New Duty**

Section 52A(1)(b) of the 2000 Act requires that a leader of a political group consisting of members of a county council or county borough council in Wales, must co-operate with the council's standards committee (and any sub-committee of the committee) in the exercise of the standards committee's functions. The duties of a standard committee are described in more detail in chapter 4.

### **Role of leader of political group**

It is essential the leaders of a political group co-operate, and ensure the members within their group co-operate, with the monitoring officer and standards committee when an issue is referred to the standards committee.

Leaders of a political group should build good relations, and work constructively with the monitoring officer, seeking advice from them and the standards committee on matters of behaviour and conduct when required, both promoting positive behaviours and addressing inappropriate ones. Group leaders should also report compliance with their duty to the standards committee. This can take the form of a short letter or report at a frequency agreed by the political group leaders in the council and its standards committee. Group leaders should also report any serious concerns about members' behaviour which have not been remedied by informal actions, in line with the requirement in the Code for councillors to report breaches.

If a member is found by the standards committee to be in breach of the Code of Conduct and is disciplined by the committee, the leader of the political group must support the action, in order to maintain the high standards of conduct expected in public life and the Code. Group leaders should have regard to the Ombudsman's Guidance and the Sanctions Guidance issued by the President of the Adjudication Panel for Wales, which can be accessed on the [Adjudication Panel's website](#).

## **Chapter 4: Functions of standards committees**

### **Introduction**

This chapter describes the duties of standards committees in relation to standards of conduct, within the 2000 Act, inserted by section 63 of the 2021 Act.

The duties will come into force from the start of the next local government electoral cycle, on 5 May 2022.

### **Current position**

Local standards committees play an important role in supporting members, individually and collectively, to develop and maintain a culture which embraces high standards of conduct.

A principal council, fire and rescue authority or National Park authority in Wales (but not a community council) is required by section 53 of the 2000 Act to establish a standards committee.

The general functions of a standards committee under section 54(1) of the 2000 Act are to promote and maintain high standards of conduct by members and co-opted members of a “relevant authority” and to assist them to observe the code of conduct.

In addition, a standards committee also has specific functions under section 54(2) of the 2000 Act, namely to:

- advise the authority on the adoption or revision of a code of conduct;
- monitor the operation of the code of conduct; and
- provide advice or provide or arrange training on the code of conduct for members of the authority.

Section 56(1) of the 2000 Act provides that a principal council’s standards committee (or a sub-committee established for the purpose) also exercises these functions in relation to members of community councils in its area.

Monitoring officers work closely with standards committees and support them in providing day-to-day advice to members on conduct matters.

A principal council may arrange for its standards committee to exercise such other functions as it considers appropriate, for example, monitoring the operation of corporate maladministration complaint procedures.

## **New duties**

### **Duty of a standards committee to monitor group leaders’ compliance with the duties, and provision of advice and training**

Section 62(3) of the 2021 Act amends section 54 of the 2000 Act to extend the specific functions of a standards committee to include monitoring compliance by leaders of political groups with the new duty imposed on them by the 2021 Act to promote and maintain high standards of conduct by members of their group. As noted above, a council’s political group



leaders and its standards committee should agree on the form and frequency of a report from each group leader to the standards committee. The standards committee should then consider each report and provide feedback to the group leaders.

A standards committee must also provide advice and training, or arrange to train group leaders on the new duty. At the start of each administration this should take place within six months of the election and be reviewed at least annually.

The standards committee chair may wish to meet with group leaders periodically to review behaviour.

## **Duty of standards committee to make annual report**

Section 63 of the 2021 Act inserts a new section 56B into the 2000 Act which places a requirement on standards committees in each “relevant authority” to make an annual report to the authority concerned. In the case of a principal council, the requirement to report to “the authority” in this context includes any community councils in its area.

As a minimum, the report must:

- describe how the committee has discharged its functions during the preceding financial year;
- include a summary of reports and recommendations made or referred to the committee by the Public Services Ombudsman for Wales relating to the investigation of alleged breaches of the member code of conduct, and any subsequent action taken by the committee;
- include a summary of notices given to the committee by the Adjudication Panel for Wales, relating to the Panel’s decisions on possible breaches of the member code of conduct;
- describe the advice it has provided on training for all members and how that has been implemented, and
- in the case of a principal council, include the committee’s assessment of how political group leaders have complied with the new duty under section 52A(1) of the 2000 Act (inserted by section 62 of the 2021 Act) to promote high standards of conduct, including the advice the standards committee has provided and the training it has suggested.

The committee may also wish to report on the number of cases considered under local resolution processes. This would help to capture data on an “all Wales” basis, on matters which do not reach the Public Services Ombudsman for Wales.

The requirement to make an annual report is intended to ensure there is a regular and consistent approach to the reporting and consideration of standards of conduct by members of relevant authorities in Wales. This is intended to promote local ownership and collective responsibility by members for ensuring high standards of conduct within their authority. To this end, section 56B places an obligation on a relevant authority to consider the report and any recommendations made by its standards committee within three months of its receipt. The authority’s consideration of a report will be a matter of public record through the published minutes of the meeting.

It would be good practice for Standards Committees to share their Annual Reports with the Public Services Ombudsman for Wales.

## **Consultation questions**

### **Question 1**

Does the draft guidance make it clear what is expected of leaders of political groups in principal councils as set out in the provisions of Part 4 of the Local Government and Elections (Wales) Act 2021 in a way that can be understood by leaders of political groups in principal councils?

If not, why not?

### **Question 2**

Does the draft guidance make it clear what is expected of Standards Committees in principal councils as set out in the provisions of Part 4 of the Local Government and Elections (Wales) Act 2021 in a way that can be understood by Standards Committees?

If not, why not?

### Question 3

We would like to know your views on the effects that the guidance would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

### Question 4

Please also explain how you believe the guidance could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and have no adverse effects on opportunities for people to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

### Question 5

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use the consultation response to express your views.

## How to respond

Submit your comments by **16 May 2022**, in any of the following ways:

- complete our [online form](#)
- download, complete our [response form](#) and email [LGDTMailbox@gov.wales](mailto:LGDTMailbox@gov.wales)
- download, complete our [response form](#) and post to:

Local Government Democracy Division  
Welsh Government  
Cathays Park

Cardiff  
CF10 3NQ

## Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please [tell us](#).

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

### Data Protection Officer

Data Protection Officer  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

E-mail: [data.protectionofficer@gov.wales](mailto:data.protectionofficer@gov.wales)

### Information Commissioner's Office

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow

Cheshire  
SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: [ico.org.uk](https://ico.org.uk)

## **UK General Data Protection Regulation (UK GDPR)**

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data. In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation. If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

## **Further information and related documents**

Number: **WG44398**

You can view this document in [alternative languages](#). If you need it in a different format, please [contact us](#).

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## GROUP LEADER'S REPORT TO STANDARDS AND ETHICS COMMITTEE

### Promoting Compliance with the Code of Conduct

Report by:

Group Leader / Deputy Group Leader  <b><i>TO BE COMPLETED BY MONITORING OFFICER'S STAFF</i></b>
Political Group:
No. of members:
Reporting period:

#### **NUMBER, SOURCE AND LEVEL OF COMPLAINTS**

	Informal Resolution	Local Resolution Hearing	PSOW
Public			
Officers			
Councillors			
<b>TRAINING RECORDS</b>			
Code of Conduct	Number of Councillors trained:	%	
Group members' Training Records attached?	Yes / No		

#### **STEPS TAKEN TO PROMOTE COMPLIANCE**

***(TO BE COMPLETED BY GROUP LEADER / DEPUTY GROUP LEADER)***

How many complaints have been raised with you about the conduct (including unacceptable behaviour) of members of your group?

Please give a brief ANONYMISED description of these complaints, including the source, subject matter and action you have taken in relation to these complaints. (Please continue on a separate sheet, if necessary.)

<b>REPORTED TO YOU BY: Monitoring Officer; Group Member; Member of another Group; Staff member; Member of the Public; Other (please specify)</b>	<b>SUBJECT MATTER OF COMPLAINT</b>	<b>ACTION TAKEN</b>	<b>OUTCOME Resolved / Ongoing</b>
<i>Example: Staff member</i>	<i>Failing to treat with respect</i>	<i>Spoke with Member concerned who agreed to apologise. Apology duly given.</i>	<i>Resolved</i>

PLEASE CONFIRM THE STEPS YOU'VE TAKEN TO:

I PROMOTE AND MAINTAIN HIGH STANDARDS OF CONDUCT BY MEMBERS OF YOUR GROUP; AND

II CO-OPERATE WITH THE STANDARDS & ETHICS COMMITTEE IN THE DISCHARGE OF ITS FUNCTIONS:

	<b>STEPS TAKEN</b>	<b>PLEASE TICK ANY THAT APPLY</b>	<b>ANY COMMENTS</b>
1.	Demonstrating personal commitment to, and attending relevant development or training on, the Member Code of Conduct and equalities		
2.	Encouraging group members to attend relevant development or training on the Member Code of Conduct and equalities		



<b>3.</b>	Asking nominees to a committee to ensure they have attended the recommended training for that committee		
<b>4.</b>	Promoting civility and respect at all times, including on social media, within group communications (including group WhatsApp's) and meetings and in formal Council meetings		
<b>5.</b>	Promoting informal resolution procedures in the council, and working with the Standards & Ethics Committee and Monitoring Officer to achieve local resolution		
<b>6.</b>	Promoting a culture within the group which supports high standards of conduct and integrity		
<b>7.</b>	Attend a meeting of the Standards & Ethics Committee if requested to discuss Code of Conduct issues		
<b>8.</b>	Support any action taken by the Standards & Ethics Committee in relation to a Member found in breach of the Code; and work to implement any recommendations from the Committee about improving standards		
<b>9.</b>	Work together with other group leaders, within reason, to collectively support high standards of conduct within the Council and in public life generally		
<b>10.</b>	Report any concerns about Members' behaviour which have not been remedied by informal actions, in line with the duty to report breaches of the Code of Conduct.		
<b>11.</b>	Any other steps (please outline any other steps taken)		


PLEASE TELL US IF THERE ARE ANY OUTSTANDING ISSUES OR CONCERNS YOU WISH TO RAISE WITH THE STANDARDS & ETHICS COMMITTEE:

WOULD YOU LIKE THE OPPORTUNITY TO DISCUSS ANY MATTERS INFORMALLY AND PRIVATELY WITH THE COMMITTEE? YES / NO


WHAT, IF ANY, TRAINING HAVE YOU UNDERTAKEN TO SUPPORT THE DISCHARGE OF YOUR GROUP LEADER DUTIES IN RELATION TO STANDARDS OF CONDUCT?

PLEASE TELL US IF THERE IS ANY FURTHER TRAINING YOU WOULD FIND HELPFUL TO ASSIST YOU TO DISCHARGE THESE DUTIES?

Ask Communications  
for:

 01656 641150

Date: 10 November  
2022

 Communications  
@ombudsman.wales

## **Our Code of Conduct complaints guidance and process**

Dear Chairs

I took up my role as Public Services Ombudsman for Wales on 1 April 2022. Since then we have continued to promote high standards in public life to maintain trust and confidence in those who hold public office.

As political leaders and Standards Committees across Wales take forward their new duties to promote high standards of conduct under the Local Government & Elections (Wales) Act 2021, I have taken the opportunity to review my guidance for members. This will help my office support them in their work and help all members fully understand the requirements placed upon them when fulfilling their role.

To support the Standards Committees, we will be making some minor changes to our process. We will continue to share our decisions with Monitoring Officers, as required by legislation. However, we will now be sharing the complaint and our decision in a standalone decision notice to facilitate the Monitoring Officers in sharing complaint information with Standards Committees (when they consider it appropriate to do so).

Since June, we have been trialling a fresh approach to how we inform members about complaints made against them. Our practice had been that we informed the accused member, the Monitoring Officer, and the Clerk (if a Town/Community Council) of a complaint as soon as it was received. We now inform the relevant parties at the point when we either decline to investigate or decide to investigate the complaint. During the trial, we found that this approach sped up our process. It also helped to avoid unnecessary concern for members complained about, as they waited for a decision on whether the complaint should be investigated. Therefore, we will be continuing with this approach.

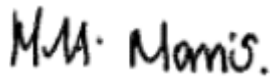
Whenever possible, I would like to see any concerns about a member's conduct to be resolved locally and at an early stage. This can calm situations down and prevent the need for further escalation and formal investigation by my office. The guidance and the changes we have made to our process will assist Standards Committees by keeping them informed of current issues, so they can take steps to address any potential concerns.

Ensuring Standards Committees are adequately informed will also support them to draw up training plans. I, and members of the public, expect all members to

take advantage of training which is available to them. I would also urge members to use any local arrangements for dealing with 'member versus member' complaints, which have proved very effective as a means of resolving many of these cases.

We should continue to work collaboratively to drive up standards in public life and to create a culture where members are respected for their selflessness, objectivity and respectful behaviour. If we do so, we can build public confidence in our democratic institutions and promote good governance for the benefit of the people in all of our communities. I, and my office, look forward to engaging with you all via the National Forum for Standards Committees.

Yours sincerely,

Handwritten signature in black ink that reads "M.M. Morris."

**Michelle Morris**  
**Public Services Ombudsman**

Cc. Monitoring Officer

# **The Code of Conduct**

## for members of local authorities in Wales

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

## Preface

Since taking up my role as Public Services Ombudsman for Wales on 1 April 2022, my office has continued to promote high standards in public life in order to maintain trust and confidence in those holding public office in local government in Wales.

Whenever possible it is preferable for any concerns about a member's conduct to be resolved locally and at an early stage. This has the potential to calm situations down and prevent the need for further escalation and formal investigation by my office. It is my aim therefore that as political leaders and standards committees across Wales take forward their new duties to promote high standards of conduct under the Local Government & Elections (Wales) Act 2021, that my office supports them in their work and that as members, you all fully understand the requirements placed upon you when you take up your role.

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

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

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

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

The guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement, including the powers of sanction available to standards committees and the Adjudication Panel for Wales. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your authority by downloading it from your authority's website, or by contacting your Monitoring Officer or Democratic Services Department.

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

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

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

I am concerned that the promotion of equality and respect and the disclosure and registration of interests continue to dominate the complaints received by my office.

I have seen year-on-year increases in the number of complaints where bullying by members is being alleged, particularly from community council clerks, other officers and contractors of local authorities or community and town councils. This suggests members generally could benefit from training or refresher training on these aspects of the Code in particular and offering our support to standards committees when they are drawing up their training plans for members.

As a member, you will be offered training on the Code, from a Monitoring Officer, your Standards Committee or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. Members of the public would expect nothing less of their elected representatives performing such a vital role for their constituents. I would also urge members to avail themselves of any local arrangements for dealing with 'member versus member' complaints, which have proved very effective as a means of resolving many of these cases.

I continue to be concerned about the number of low-level complaints that are being received. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times of greater demand for public services, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest.

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

A handwritten signature in black ink that reads "M.M. Morris." The signature is written in a cursive, slightly slanted style.

Michelle Morris  
Public Services Ombudsman for Wales  
October 2022



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

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

## **Acknowledgement**

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

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

First published April 2010. This edition published October 2022.

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## 1 Introduction

- 1.1 The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>2</sup> which all relevant authorities were required to adopt.<sup>3</sup>
- 1.2 For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>4</sup>
- 1.3 Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.
- 1.4 Standards committees of principal councils<sup>5</sup> are required to assist members and co-opted members of their authorities, together with members of community and town councils in their area, to observe the Code and to arrange for advice and training to be provided. **I expect all members to attend training and take advice where it is offered.** I also support individual authorities which require members to attend training on the Code before they can join certain decision-making bodies, such as planning committees. Sanctions guidance issued by the President of the

<sup>2</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>3</sup> Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>4</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

<sup>5</sup> A county or county borough council in Wales

Adjudication Panel for Wales indicates that a refusal, or failure, to attend available training on the Code will be regarded by its tribunals as an aggravating factor when assessing the sanction to be applied to a member found to have breached the Code.

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

### Investigations: Assessing the Public Interest

- 1.6 It is my role as Public Services Ombudsman for Wales to consider and, when appropriate, undertake independent investigations of serious complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code, I use a two-stage test..
- 1.7 At the first stage, I will aim to establish whether there is direct evidence that a breach actually took place. The level of proof that is required is on the balance of probabilities. If that evidential test is met, at the second stage, I will consider whether an investigation or a referral to a standards committee or the Adjudication Panel for Wales is required in the public interest. Some of the public interest factors that I will consider are set out below. These factors are not exhaustive and the weight to be attached to each will vary according to the facts and merits of each case.

### 1.8 Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has previously been found to have breached the Code by a standards committee or the Adjudication Panel for Wales
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales
- whether investigation or referral to a standards committee or the Adjudication Panel for Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

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

## Legal Precedents

- 1.10 When applying the two-stage test, in addition to taking account of previous decisions of the Adjudication Panel for Wales and standards committees, I must be mindful of relevant legal precedents set by the Courts. Since the Code was introduced in 2001, there have been two significant appeals heard by the High Court that have set important benchmarks in relation to cases in Wales.<sup>6</sup>
- 1.11 In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local standards committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors, the finding of a breach in this case was a disproportionate interference with the member’s rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel’s decision was, therefore, set aside.
- 1.12 In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member’s office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards

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<sup>6</sup> Calver, R (on the application of) v The Adjudication Panel for Wales [2012] EWHC 1172 (Admin); Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin).

officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.

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

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

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

### Local Resolution Process

1.16 Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. In some cases, the arrangements also cover complaints made about members by officers. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints. Typically, these complaints continue to be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me



about a fellow member if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am very likely to refer the matter back to the authority's Monitoring Officer for consideration under this process, in the first instance.

- 1.17 In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.
- 1.18 The aim of local resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the authority and the authority's reputation. The process may, for example, result in an apology being made by the member concerned, or a recommendation that the member undertakes specific training. However, where a member has repeatedly breached their authority's local protocol, I would expect the Monitoring Officer to refer the matter back to me. If I see a pattern of similar complaints being made to me by the same members, I will consider this to be a serious matter and decide whether the persistent reporting of such complaints is conduct which in itself should be investigated as a potential breach of the Code.
- 1.19 When I have investigated a complaint, I may refer the matter to a standards committee or the Adjudication Panel for Wales for determination. This will depend on the nature and individual circumstances of the alleged breach. When issuing my report, I will reflect on and analyse the evidence gathered and draw my conclusions as to whether it is suggestive that a breach of the Code has occurred. However, the authority to make a determination of breach rests solely with the relevant standards committee or the Adjudication Panel for Wales.
- 1.20 Local resolution can also play an important role within community councils where, all too often, low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a 'Model Local Resolution Protocol for Community and Town Councils', to support councils in resolving minor disputes in a way which is proportionate to the scale and resources of the sector. I strongly

encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.

1.21 An overview of the complaints process is at Appendix 1 to this guidance.

### Standards Committee

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

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

1.24 When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant authority's code of conduct, it may determine that:

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

- 1.25 A member may seek the permission of the President of the Adjudication Panel for Wales to appeal against the determination of a standards committee.
- 1.26 The Local Government and Elections (Wales) Act 2021 (the 2021 Act), which received Royal Assent on 20 January 2021, places new duties on the standards committee of a county and county borough council in Wales which come into force from 5 May 2022. The committee will have the additional function of monitoring and providing support to political group leaders in principal councils in undertaking their new duty, under the 2021 Act, to promote high standards of conduct by members of their group. Each standards committee will also be required to make an annual report to their authority describing how the committee's functions have been discharged and providing an overview of conduct matters generally within the authority. The 'Explanatory Notes' to the 2021 Act indicate that the requirement on a principal council's standards committee to make a report includes a requirement to make a report to any community and town councils in its area.

### Political Group Leaders

- 1.27 As mentioned above, the 2021 Act also introduces a new duty on political group leaders in a county or county borough council to take reasonable steps to promote and maintain high standards of conduct by members of their group. In doing so, a group leader must co-operate with the standards committee when exercising its functions. In turn, a standards committee must ensure group leaders have access to advice and training to support them in undertaking their new duties and to monitor group leaders' compliance with those duties. A group leader who fails to comply with the new duty in a meaningful way may potentially be regarded as bringing their office into disrepute, in breach of paragraph 6(1)(a) of the Code

## Adjudication Panel for Wales

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

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

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

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

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

- 1.32 Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).
- 1.33 Further information about the role and procedures of the Adjudication Panel and its tribunals, including guidance on sanctions, can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Principles

- 1.34 The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these Principles which are designed to promote the highest possible standards. These Principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report “Standards in Public Life”. Three more were added to these in the local government principles in Wales: a duty to uphold the law, proper stewardship of the authority’s resources and equality and respect for others.
- 1.35 Members elected to local authorities give generously of their time and commitment for the benefit of their communities. The Principles provide a framework for channelling your commitment in a way which will reflect well on you and your authority, and which will give your communities confidence in the way that your authority is governed.
- 1.36 The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. Paragraph 2(2) of the Code states that you should read it together with the Principles, which are prescribed in a separate statutory instrument<sup>7</sup>. For ease of reference, they are replicated below.

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<sup>7</sup> The Conduct of Members (Principles) (Wales) Order 2001, SI 2002 No. 2276 (W.166)

## 1. Selflessness

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

## 2. Honesty

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

## 3. Integrity and Propriety

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

## 4. Duty to Uphold the Law

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

## 5. Stewardship

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

## 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.

1.37 The Code is consistent with, and provides for the practical application of, these Principles. The Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**. Given the close association between the Principles and the Code, if you follow the Principles as a basis for your conduct, you are less likely to behave in a way that will constitute a failure to comply with the Code.

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



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

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

### When does the Code apply?

1.40 The Code applies:

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your authority or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your authority (paragraph 2(1)(a)-(c)).
- **At any time**, if you conduct yourself in a manner which could **reasonably** be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your authority's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).



- 1.41 Where you act as a representative of your authority on another relevant authority, or any other body, you must, when acting for that other authority, comply with its code of conduct** (paragraph 3(a)).  
When you are nominated by your authority as a trustee of a charity you are obliged when acting as such to do so in the best interests of that charity, in accordance with charity law and with the guidance which has been produced by the Charity Commission (see its website: [www.gov.uk/government/organisations/charity-commission](http://www.gov.uk/government/organisations/charity-commission)).
- 1.42 If you are acting as a representative of your authority on another body, for example on the board of a housing association, which does not have a code of conduct relating to its members, you must comply with your authority's own Code** unless it conflicts with any legal requirements that the other body has to comply with (paragraph 3(b)).
- 1.43 If you refer to yourself as 'councillor' (or 'member' of your authority) in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way, or comments you make are clearly related to your role as a member, then the Code will apply to any comments you make there. Even if you do not refer to your role as a councillor or member, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.
- 1.44 The Welsh Local Government Association has produced useful guidance on social media entitled "Social Media: A Guide for Councillors". The guidance aims to provide you with a clearer idea about how you can use social media, the possible pitfalls and how to avoid them. It is available on their website at [www.wlga.wales](http://www.wlga.wales) or by calling 029 2046 8600.
- 1.45 If you are nominated by your authority as the director of a company (a stock transfer housing association for example) you are obliged to act in the best interests of the company. If it has a code of conduct for its

directors, you must abide by it. If it does not, you must comply with your authority's Code, except on the rare occasions where it conflicts with any legal obligations the company may have.

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

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

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

### **Example 2 – official capacity and misuse of resources (paragraphs 2(1)(b) and 7)**

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

had acted in his official capacity because he had used his council-provided equipment and email address. Therefore, he could reasonably be regarded as representing himself as a councillor.

### **Example 3 – official capacity (paragraph 2(1)(b))**

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

### **Example 4 – personal capacity and disrepute (paragraphs 2(1)(d) and 6(1)(a))**

A Community Councillor, whilst acting in a personal capacity, posted a number of messages on Facebook about high-profile politicians which the Adjudication Panel found were extreme, threatening and which promoted violence towards the subjects of the messages. The Panel noted that whilst politicians were expected to possess "thick skins" and display a greater tolerance than ordinary citizens, such tolerance should not have to extend to personal, inflammatory and egregious comments such as those that had been posted. The Panel found the comments were not 'political expression', which might be afforded protection under the ECHR, and were sufficiently serious in nature as to bring the office of member and the Council into disrepute in breach of paragraph 6(1)(a).

The Panel found that, in accordance with paragraph 2(1)(d) of the Code, the requirement in paragraph 6(1)(a) for the Councillor not to bring his office or authority into disrepute applied, regardless of the fact that he was acting in a personal capacity. As the comments were made in a private capacity and did not comprise political expression, they did not attract the enhanced protection afforded to politicians under the ECHR. However, the Panel

concluded that even if enhanced protection had applied, the comments were so extreme and egregious that a finding of a breach of paragraph 6(1)(a) of the Code would nevertheless have been justified.

## 2 General obligations under the Code of Conduct

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

### Equality See paragraph 4(a)



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

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

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

- 2.4 The Equality Act 2010 (as amended) reinforces the importance of this part of the Code. It imposes positive duties to eliminate unlawful discrimination and harassment and to promote equality. Under equality laws, your authority may be liable for any discriminatory acts which you commit. This will apply if you do something in your official capacity in a discriminatory manner.
- 2.5 You must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders your authority's fulfilment of its positive duties under equality laws. Such conduct may cause your authority to break the law, and you may find yourself subject to a complaint that you have breached this paragraph of the Code.
- 2.6 You must also be mindful that, at all times, including when acting in your private capacity, you must not act in a way that would bring your authority into disrepute. It is likely that engaging in behaviour which could be considered to be in breach of the Equality Act in your private capacity would fall into this category.

### **Example 5**

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

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

### **Example 6**

A member of a County Borough Council sent numerous emails challenging the capacity of an officer of the Council to fulfil their role due to an unsubstantiated allegation of ill-health and a known disability, without objective medical evidence. The Adjudication Panel found that the failure to understand and appreciate the officer's right to privacy, and the wide dissemination of private medical information and speculation about the

progression of the condition demonstrated a failure to adhere to the principle that there should be equality of opportunity for all people, regardless of disability. Through his actions, it was clear that the member's view was that the officer should not be employed in his role due to his disability. The Panel found the member was in breach of paragraph 4(a) (equality of opportunity) of the Code.

### Treating others with respect and consideration

See paragraph 4(b)

 Political comments can attract Article 10 rights

- 2.7 **When undertaking your role as a member, you must show respect and consideration for others.** I expect members to afford the public colleagues, opponents and officers the same courtesy and consideration they show to others in their everyday lives. This does not mean you cannot participate in robust debate with political opponents, but it must be measured.
- 2.8 Article 10 of the (ECHR) provides a right to freedom of expression and information, subject to certain restrictions. Freedom of expression is a right which applies to all information and ideas, not just those that are found favourable. However, it is a right that may be restricted in certain circumstances, for example, for the protection of the rights and interests of others.
- 2.9 Your freedom of expression as an elected member attracts enhanced protection when comments you make are political in nature. Therefore, the criticism of opposition ideas and opinion is considered to be part of democratic debate, and it is unlikely that such comments would ever be considered to be a breach of the Code.
- 2.10 “Political” comments are not confined to those made within a council chamber and, for example, include comments members may generally make on their authority's policies or about their political opponents. Therefore, unless the comments are highly offensive or outrageous, it is unlikely that I will investigate a complaint about comments made in this context and I will take the view that the offended member needs a “thicker skin”, as has been stipulated by the High Court.

- 2.11 I may also decline to investigate a complaint where the member has raised “political” issues with officers. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their duties or undermine public confidence in the administration. That said, officers who are in more senior positions, for example Chief Executives or Heads of Services, will also be expected to have a greater degree of robustness.
- 2.12 Whilst I recognise that political debate can, at times, become heated, the right to freedom of expression should not be used as an excuse for poor conduct generally. Such poor conduct can only discredit the role of members in the eyes of the public.
- 2.13 When considering such complaints, I will take into account the specific circumstances of the case; whether, in my view, the member was entitled to question the officer concerned, whether there was an attempt to intimidate or undermine the officer and the content and context of what has been said.

### **Example 7**

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



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

### **Example 8**

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

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

### **Example 9**

A member of a County Council accompanied a constituent to support her at a hearing in the County Court of an application to suspend a warrant for possession of her rented council property, sought by the member's Council. The application was dismissed. A number of the Council's officers attended the hearing, including the Finance Team Manager. Following the hearing,



the member made comments in front of the officers and his constituent which, the Adjudication Panel found, amounted to a threat against the continued employment of one of the officers. The Panel noted there was a significant power differential between the officer, who was of a rank considerably more junior than a Director, and the member concerned as her quasi-employer. The Panel considered the member's right to freedom of expression did not outweigh the officer's right not to be subjected to unwarranted comments, or the public interest in officers being able to carry out their duties. The Panel found that the member's conduct was intended to upset the officer and cause her to fear for her job in the future and, as such, amounted to a breach of paragraph 4(b). The Tribunal also found the member's conduct amounted to bullying of the officer concerned in breach of paragraph 4(c).

### Example 10

At a meeting purportedly arranged to discuss Cabinet matters, the Leader of a County Borough Council instead took the opportunity to challenge the performance of the Council's Chief Executive. He did this in front of another member of the Council and members of the Council's management team, who were subordinate to the Chief Executive. The Adjudication Panel noted the Leader made no attempt to abide by the Council's protocol covering member / officer relations. He did not give the Chief Executive any indication prior to the meeting that he intended to raise performance issues. The Panel concluded that the Leader's conduct towards the Chief Executive was inappropriate and hectoring and amounted to a failure to show respect and consideration, in breach of paragraph 4(b) of the Code).

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

 Consider your conduct from  
the other person's perspective

**You must not use any bullying behaviour or harass any person including other councillors, council officers (the Clerk or Proper Officer) or members of the public.**

2.14 Harassment is repeated behaviour which upsets or annoys people.

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

2.15 When considering allegations of bullying and harassment, I will consider

both the perspective of the alleged victim, and whether the member intended their actions to be bullying. I will also consider whether the individual was reasonably entitled to believe they were being bullied.

Bullying is often carried out face to face but, increasingly, it can be carried out in print or using electronic media. The standards of behaviour expected are the same, whether you are expressing yourself verbally or in writing.

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

- 2.17 The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.
- 2.18 Local authorities have appropriate channels for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.
- 2.19 The Adjudication Panel has made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 11**

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

and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

### Example 12

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

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



**2.20 You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your authority.** You should not approach anyone who works for, or on behalf of, the authority with a view to pressurising them to carry out their duties in a biased or partisan way. They

must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. As well as avoiding pressurising officers in person, you need to avoid doing so in writing, using electronic media or in the press.

- 2.21 Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.
- 2.22 If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code. I would encourage you to adhere to any protocol developed by your authority that deals with relationships between members and officers.

### **Example 13**

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

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

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

### Example 14

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

### Disclosing confidential information See paragraph 5(a)



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

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

- 2.24 The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a member, you may be party to confidential information about individuals or organisations including personal or commercially sensitive matters. This might include information about people's employment, or personal matters arising from social services work, for instance. Sometimes, these will be marked 'confidential'. On other occasions, this will not be the case, but you must not disclose them even if they are not marked as confidential. If you are in any doubt, always ask your Monitoring Officer.
- 2.25 As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. These reports have usually been assessed by the author as containing sensitive information, following expert legal advice. The sensitivity of the information may decline over time, but you are strongly urged to take proper legal advice before disclosing it. Similarly, legal advice, whether provided by external lawyers or your authority's in-house legal staff, is almost always covered by legal privilege and should not be disclosed
- 2.26 I expect information provided to members during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

### **Example 15**

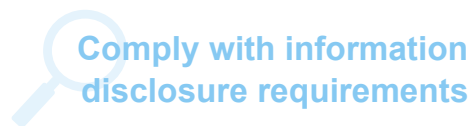
A member of a County Borough Council who sat on the Council's adoption panel disclosed to a third party details of a person who had applied to the panel to adopt a child and the outcome of the application. He could only have become aware of the information he disclosed by virtue of his membership of the panel. The Adjudication Panel found that the member had disclosed confidential information in breach of the Code.



## Example 16

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

## Preventing access to information See paragraph 5(b)



### **2.27 You must not prevent any person from accessing information which they are entitled to by law.**

2.28 This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your authority which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Monitoring Officer.

2.29 Information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your authority may be required to release it in response to a request. If you do not provide the information to the relevant officer of your authority on request, you will be in breach of the Code.

2.30 Your authority needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to your authority's relevant officer to allow the authority to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.



### Example 17

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Officer. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

### Disrepute See paragraph 6(1)(a)



- 2.31 **You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your authority as a whole. You should also ensure that you do not engage in any behaviour that may prejudice an investigation undertaken by me or your Monitoring Officer, as this may also constitute disrepute (see also paragraph 6(2)).
- 2.32 When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Leader, an Executive Member of Committee Chair, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour by such members will damage public confidence and be seen as bringing both their office and their authority into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their authority into disrepute.

- 2.33 Dishonest and deceitful behaviour will bring your authority into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.
- 2.34 Whilst you have the right to freedom of expression, this is not unrestricted and making unfair or inaccurate criticism of your authority in a public arena might be regarded as bringing your authority into disrepute. Similarly, inappropriate emails or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.
- 2.35 You must also conduct yourself in an appropriate manner with others within the confines of your authority's building, regardless of whether your conduct is likely to be in the public domain.

### **Example 18**

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself, by misrepresenting the purchase as being on behalf of the Council, and his abusive behaviour towards the staff had brought the office of member into disrepute.

### **Example 19**

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted that his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The

Panel found that the conviction and negative publicity that surrounded the case had brought the member's office into disrepute, in breach of paragraph 6(1)(a) of the Code

### Reporting criminal behaviour See paragraph 6(1)(b)



2.36 **The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your authority (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your authority's confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your authority's Monitoring Officer.

### Reporting breaches of the Code See paragraph 6(1)(c)



2.37 **If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.

2.38 In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should consult your Monitoring Officer as soon as possible.

2.39 Your Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, your Monitoring Officer may suggest that the matter would be more appropriately dealt with through the authority's local resolution process.

- 2.40 In the most serious of cases, or where the local resolution process breaks down or is unsuitable, your Monitoring Officer may, as an exception, decide to refer them to me directly or on your behalf. In most other cases, you will be advised to do so yourself.
- 2.41 The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.
- 2.42 In determining whether to investigate a complaint of a breach, I will use the two-stage test that I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.
- 2.43 To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### Vexatious complaints

See paragraph 6(1)(d)



- 2.44 **You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your authority.**
- 2.45 You must not make complaints against other members, your authority's officers or people working on behalf of your authority which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and

where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the relevant authority's local resolution process.

2.46 Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and, as I have explained, may also be a breach of the Code. You must report well-founded alleged breaches to your Monitoring Officer - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

2.47 The Code should not be used by members to pursue their political or private differences. You should therefore avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about, , for example, when you may disagree with a member's approach to your authority's business or their role as member. Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your other obligations under the Code, such as the requirement not to bring your position as a member into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

### Example 20

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

## Co-operating with investigations See paragraph 6(2)



**2.48 You must co-operate with an investigation when it is being conducted by me or by your Monitoring Officer using our statutory powers.** Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and your Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, you are expected to give priority to their investigations, to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

2.49 I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

2.50 However much you may be concerned about allegations that you or a fellow member failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

2.51 If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

### **Example 21**

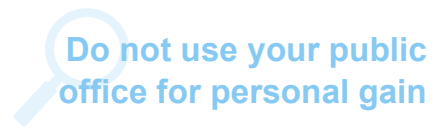
My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales. During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### **Example 22**

During the course of an investigation into alleged inappropriate messages posted on Facebook by a Community Councillor, the member concerned failed to provide information to my office about historic changes made to the privacy settings on his account. He claimed to not know how to do so, and did not respond when sent advice by my office on how to access his activity log. The Adjudication Panel found the member had been less than candid about his ability to check any change of settings on his account, when he was clearly an experienced user of Facebook. The Panel found the Councillor had deliberately avoided providing information and full and frank responses to the reasonable requests of my office, in breach of paragraph 6(2) of the Code.



## Using your position improperly See paragraph 7(a)



- 2.52 **You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>8</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**
- 2.53 Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.
- 2.54 The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act, then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraph 6(1)(a). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

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<sup>8</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).



### Example 23

A member of a County Council had requested that land in his ownership in Village A be included as suitable for development in the Council's Local Development Plan (LDP). When the Council was considering suitable settlement areas for inclusion in the LDP, officers recommended that land in the neighbouring village (Village B) be included in the draft plan instead. Despite having received very clear advice from the Council's Monitoring Officer on his prejudicial interest, the member emailed the Council's planning policy officer and outlined a number of arguments which he claimed favoured the inclusion of his land in Village A as opposed to the land in Village B. At the relevant time the draft plan had been disclosed to members of the Council on a confidential basis and had not been disclosed publicly.

The Adjudication Panel found that, by sending the email, the member had breached paragraph 7(a) of the Code by attempting to use his position improperly for his own advantage. At the hearing, he sought to apportion blame on the Council's Monitoring Officer for failing to advise and train him properly on the Code, when this clearly was not the case. His actions also brought his office and the Council into disrepute..

### Example 24

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) (respect and consideration) and 6(1)(a) (disrepute) of the Code.

### Example 25

A member of a County Borough Council made representations to council officers on behalf of a constituent about matters relating to the purchase by the constituent of a parcel of Council-owned land through a tender process. This included the removal of a restrictive covenant which rendered the land of little value to the constituent given his intention to develop it. The member volunteered in evidence before the Council's Standards Committee that his involvement was a possible way of mitigating legal costs for his constituent. Throughout his involvement, the member failed to disclose that he had a close personal association with the constituent, who he had known for 40 years and regarded as a close personal friend who he saw almost daily. The Standards Committee found that the member had breached paragraph 7(a) (and other paragraphs) of the Code in that through his interventions he had sought to use his position improperly to confer an advantage upon and avoid a disadvantage for his friend. This would potentially create a disadvantage for any member of the public who might wish to express an interest in the land had it been on the open market (as the absence of the restriction would have required), especially the lower bidder in the original tender process..

### Using the authority's resources See sub-paragraphs 7(b)(i) – (iv)



- 2.55 You must only use or authorise the use of the resources of the authority in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** Where your authority provides you with resources (for example telephone, computer and other IT facilities, transport or support from officers), you must only use these resources or employees for carrying out your local authority business and any other activity which your authority has authorised you to use them for.
- 2.56** You must be familiar with the rules applying to the use of these resources made by your authority. Failure to comply with your authority's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your authority's resources, you must take care to ensure that this is allowed by your authority's rules.

## Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

Do not use resources for private or political purposes

- 2.57 **You must make sure you use the authority's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any guidance issued by your authority, for example, your authority's Information Security Policy.
- 2.58 You should never use authority resources for purely political purposes, including designing and distributing party political material produced for publicity purposes. However, your authority may authorise you to use its resources and facilities for political purposes in connection with your authority's business, for example, holding meetings of your political group. In this case, you must be aware of the limitations placed upon such use for these purposes. Members should also have regard to the fact that periods leading up to local government elections are particularly sensitive in this regard. Using your authority's resources outside of these limitations is likely to amount to a breach of the Code. Some authorities will permit members to use authority-supplied IT equipment such as laptops for ancillary use. Provided that such usage is in line with the authority's requirements, there would not be a breach, but sending mass emails as part of an election campaign, for example, would not be appropriate.
- 2.59 Where, however, there is no policy or the policy is silent you may not use these resources for any political or private purposes.

### Example 26

A member of a County Council was found in breach of the Code for making improper use of his council-issued computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council's equipment in breach of the Code and had brought the office of member into disrepute.

## Example 27

A member of a County Borough Council was found by the Adjudication Panel to have breached the Code by using his council-issued mobile phone excessively for private purposes. Whilst limited personal use was permitted under the Council's IT policy, a bill in excess of £1000 was incurred in respect of private calls which the member had made.

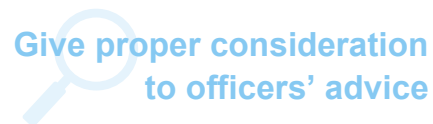
## Reaching decisions objectively See paragraph 8(a)



- 2.60 **When taking part in meetings of your authority, or when arriving at decisions relating to the authority's business, you must do so with an open mind and consider the issues objectively, having regard to any relevant advice of your authority's officers.** During the decision-making process, you must act fairly and take proper account of the public interest.
- 2.61 In some decisions, such as those taken by planning committees or where you are participating in the consideration of a ward matter, you are required always to make your decisions on the basis of the facts in front of you, and not to have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.
- 2.62 **Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.

- 2.63 Section 78 of the Local Government (Wales) Measure 2011 prohibits a member of an overview or scrutiny committee meeting from voting on a question at a meeting if, before the meeting, the member has been given a party whip relating to the question.
- 2.64 In order for me to investigate complaints of “whipping” of votes by political groups, there must be written evidence or other corroborative evidence available of the whip. Suppositions based upon the voting patterns of particular groups will not be sufficient evidence of a whip.

### Considering advice provided to you and giving reasons See paragraph 8(b)



- 2.65 **You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your authority.** You must have regard to all of the advice you receive from your authority’s officers, especially advice from the Chief Executive, Chief Finance Officer, Monitoring Officer and Chief Legal Officer, where they give it under their statutory duties. Such advice may also be contained in policy and guidance documents produced by your authority. This is a complex area and there are provisions within other legislation which underpin it but, in general, it goes well beyond a requirement to simply consider and reject advice if it is not welcome.
- 2.66 I expect members to follow the advice unless there are strong reasons not to do so, and where a decision is made not to follow advice, it is highly advisable to record the reasons for not doing so.
- 2.67 It is worth reflecting also that this places a considerable onus on statutory officers to consider their formal advice carefully, and again, where they believe it is likely to be contentious, to keep a record of it. There may be isolated cases where advice is given to a member which, when followed, leads to a breach of the Code. In investigating such cases, if the evidence suggests that there has been a breach, I would generally regard the flawed advice as a factor in mitigation, rather than as evidence that no breach occurred.

- 2.68 It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the officer concerned all of the information they need to take into account when giving you advice
- 2.69 If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.
- 2.70 You must give reasons for all decisions in accordance with any statutory requirements and any reasonable requirements imposed by your authority. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected, but it is not confined to these.
- 2.71 As a matter of good practice, where you disagree with officer recommendations in making a decision, you should give clear reasons for your decision. This applies to decisions to vote against the advice of the statutory officers, even if you lose the vote. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes. You should be aware that voting against the advice of the statutory officers without good reason may be a breach of the Code.
- 2.72 In reaching decisions where the advice is not provided by the statutory officers, you should still have regard to the advice provided by officers and take it into account in reaching your decision. You may also wish to have regard to other advice you have received and, of course, to the position adopted by a political group of which you are a member. In some circumstances, such as planning decisions, you must not vote on the basis of a "whip" imposed by your group. In others, it is reasonable to do so but you should avoid having an entirely closed mind prior to a debate. Again, whatever the reasons for voting against officer advice, it is highly advisable to record them.

### Example 28

A member of a County Council who chaired a council meeting refused to allow the Council's Monitoring Officer to advise members during a debate about the Council's "Annual Letter" from the then Wales Audit Office. Also, when the Monitoring Officer did manage to intervene to express grave concerns about the way in which the proceedings were being conducted, the member failed to have regard to the limited advice the Monitoring Officer was allowed to offer and simply said that he "noted her comments".

The member was found to have breached paragraph 8(a)(iii) (regard to monitoring officer advice) of the Code. The Adjudication Panel took into account the member's full apology and expressions of remorse for his behaviour and indicated that had the member not already accepted his wrongdoing it would have imposed a greater sanction than it did.

### Expenses See paragraph 9(a)



**2.73 You need to follow the law and your authority's requirements in claiming expenses and allowances.** If you are in any doubt about your entitlements, or the proper way to claim, you should ask for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming, for example, for childcare.

### Example 29

A member of a County Borough Council was alleged to have used the Child/Dependent Care Allowance to pay his wife to look after their daughter. During the investigation, it transpired that he had paid his adult son (from a previous marriage) a regular weekly income to care for the child as and when required. The member was able to provide proof of the payments through receipts and cheque counterfoils. In view of this, there was no evidence of any failure on the part of the member to comply with the Code



## Gifts and hospitality See paragraph 9(b)



**2.74 It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your authority. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

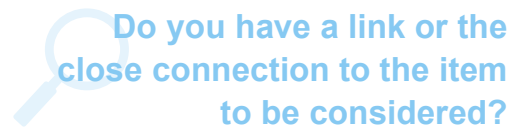
## 3 Personal and prejudicial interests

- 3.1 The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.
- 3.2 Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.
- 3.3 In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should ask your Monitoring Officer for advice. However, the decision on what course of action should be taken remains with you.



- 3.4 To provide some further assistance, I have attached two flowcharts at Appendix 2 and 3 which Ceredigion County Council's former Monitoring Officer designed to take you through the questions that you should ask when deciding whether you have an interest. They are for illustration purposes only and are not definitive.
- 3.5 Guidance on registering interests is at Section 4.

### Personal Interests See paragraph 10



- 3.6 **While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but there are other occasions, such as when speaking to your authority's officers about the matter concerned, when you may also need to do so.
- 3.7 Listed below are some questions that you should ask yourself when deciding if you have an interest:

#### **Do I have a personal interest?**

- 3.8 You have a personal interest in any business of your authority, including when making a decision, where it relates to or is likely to affect:
1. your job or your business
  2. your employer, or any firm in which you are a partner or paid director
  3. any person who has paid towards the cost of your election or your expenses as a member
  4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your authority's area

5. any contract that your authority makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
  6. any land in which you have an interest and which is in your authority's area (this is especially important in all planning matters including strategic plans)
  7. any land let by your authority to a firm in which you are a partner, paid director or a body (as set out in 4, above)
  8. any body to which you've been elected, appointed or nominated by your authority
  9. any of the following in which you have membership or hold a position of general control or management:
    - public authority or body exercising functions of a public nature
    - company, industrial and provident society, charity or body directed to charitable purposes
    - body whose main role is influencing public opinion or policy
    - trade union or professional association
    - private club, society or association operating in your authority's area
  10. any land in your Council's area which you have a license to occupy for at least 28 days
  11. any person with whom you have a close personal association.
- 3.9 It is always safer to declare an interest, however, if in doubt, consult your Monitoring Officer.

### Matters affecting your well-being or financial position



Will your well-being or that of a close associate be effected?

- 3.10 If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward or, for members of authorities which do not have wards (for example, national parks), in your authority's area, you have a personal interest.
- 3.11 Examples of decisions of this kind include, but are not limited to, obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have also included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### What is “a body exercising functions of a public nature”?



Does the body carry out a public service?

- 3.12 The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether a body meets that definition:
- Does that body carry out a public service?
  - Is the body taking the place of local or central government in carrying out the function, for example, a care home with residents supported by social services?
  - Is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority, for example, a private company collecting refuse for the authority?
  - Is the function exercised under legislation or according to some statutory power?
  - Can the body be judicially reviewed?

3.13 Unless you answer ‘yes’ to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition are health bodies, council-owned companies exercising public functions and school governing bodies. If you need further information or specific advice on this matter, please contact your Monitoring Officer..

### What does “affecting well-being or financial position” mean?

Is your quality of life affected?

3.14 The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

### Who is a close personal associate?

Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

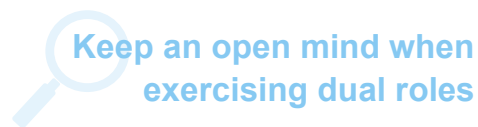
3.15 Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community. It also does not include a person, such as a close relative, with whom you have become estranged and it would be unreasonable for you to have knowledge of their business or other interests, or the potential impact on their well-being of a matter considered by your authority.

3.16 Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Monitoring Officer.

### What if I belong to an authority without wards or electoral divisions?

3.17 If you are a member of an authority that does not have wards or electoral divisions, you will need to declare a personal interest whenever you consider a matter in a meeting of your authority if it affects the well-being or financial position of you or one or more of your close personal associates, **more than** it would affect other people in your authority's area. If you are a local authority member of a fire authority, for example, you would need to declare an interest under this heading on matters concerning your nominating authority's area.

#### “Twin hatted” members



3.18 If you are a member of both a community council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.

3.19 If you do so, you would be well advised to state at the Community Council meeting that you would be looking at the matter afresh when you consider it at the County Council meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.

3.20 Obviously, if the planning application was one submitted by the Community Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 30

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk's remuneration package; the member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member's relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members' ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

### Example 31

A member of a County Borough Council made numerous representations to his Council's officers on behalf of a constituent who was involved in the purchase of Council-owned land that was being sold by way of a tender process. The member and constituent were long-standing close personal friends, having been acquainted for some 40 years. The constituent stood to gain financially from the member's intervention. The Adjudication Panel found that the member did not consider (as required by paragraph 10(1) of the Code) whether he had a 'personal interest' when he spoke, wrote and attended meetings about the land; and he did not disclose the existence and nature of the interest in breach of paragraph 11. The Panel found that the member's personal interest was so significant as also to be a 'prejudicial interest'. The Panel, therefore, found that the member also failed to comply with paragraph 14 of the Code, in that he should not have made oral or written representations or attended meetings to discuss the matter on behalf of his constituent.

### What if I am not aware of my personal interest?

Disclose what you know

3.21 Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

### What to do when you have a personal interest

See paragraph 11

Once disclosed you can stay and participate if your interest is not prejudicial

3.22 When you have a personal interest in any business of your authority, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.

3.23 If you are attending a **meeting**,<sup>9</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your authority's Monitoring Officer. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.

<sup>9</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present, not just formal meetings of the council. For example, it can include an informal meeting of a member and officer.

- 3.24 If you are making **written representations** (including by email, text etc) to a member or officer of your authority regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.
- 3.25 Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.
- 3.26 **Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.
- 3.27 If you are making a decision as part of an **executive or board**, you must make sure that the written record of that decision (for example, minutes of a cabinet meeting) includes details of your interest.
- 3.28 If your Monitoring Officer has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.
- 3.29 If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.



### Example 32

A Leader of a County Borough Council was present at, and participated in, an inter-agency meeting arranged to discuss locally controversial proposals to provide residential accommodation for young children, potentially with behavioural difficulties, in a property neighbouring his home. The Leader participated in the meetings despite having received advice, from the Council's Monitoring Officer and Chief Executive, that he had a prejudicial interest and should not do so.

The Adjudication Panel found the Leader had a personal interest (which was not contested) and prejudicial interest in the proposal due to the proximity of the property to, and the potential detrimental impact on the value of, the Leader's home. The Panel found that despite saying he was compromised during the course of the inter-agency meeting, the Leader did not disclose a personal interest at the start of the meeting, in breach of paragraph 11(1) of the Code; and did not withdraw from the meeting, in breach of paragraph 14(1)(a). In playing an active role and making representations at the meeting, the Leader attempted, inappropriately, to influence decisions about the proposal in breach of paragraphs 14(1)(c) and (e). In reaching this conclusion, the Panel commented that a decision about any business of the authority for which a member has a prejudicial interest does not need to be a formal decision of the authority that is subject to a vote or to committee approval or other formal process. There are a range of decisions that can be made about a matter. The Panel found that the comments made by the Leader at the meeting were capable of influencing others and any decision made on the proposal, including by the agency proposing to operate the children's home.

The Panel also found that, as a consequence of his prejudicial interest in the matter, the Leader should not have sent an email to the Director of Social Services about the proposal after the inter-agency meeting, in breach of paragraph 14(1)(d). Nonetheless, in doing so, he failed to disclose his personal interest in that email as required by paragraph 11(2)(a) and sought to influence a matter for which he had a prejudicial interest, in breach of paragraph 14(1)(c).

The Panel found that in involving himself in the way that he did, the Leader could reasonably be regarded as bringing his office and the authority into disrepute, in breach of paragraph 6(1)(a).

### Example 33

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

### Prejudicial Interests See paragraph 12

#### Do I have a prejudicial interest?

Do not be swayed by what you think – consider what a reasonable member of the public would think?

3.30 Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest and:

- the matter does not fall within one of the exempt categories of business (see below), or
- the exempt categories do not apply because the matter relates to a licensing or regulatory matter (see paragraph 12(3)).

What is so significant that it is likely to prejudice your judgement?



- 3.31 If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.
- 3.32 You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.
- 3.33 The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.
- 3.34 Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.
- 3.35 You would have a prejudicial interest in a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of the ward or (electoral division affected by the decision (or authority, if your Council does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**

3.36 In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.

**Does the matter fall within one of the exemptions?**  
See paragraph 12(2)



3.37 You will not have a prejudicial interest if the business falls within one of a number of exemptions which are set out below.

3.38 The business relates to:

- another relevant authority (i.e. a county / county borough council, community council, fire and rescue authority, national park authority or police and crime panel) of which you are also a member
- another public authority or a body exercising functions of a public nature in which you hold a position of general control or management
- a body to which you have been elected, appointed or nominated by your authority
- your role as school governor where you have not been appointed or nominated by your authority (for example, a parent governor) unless the business specifically relates to your school
- your role as a member of a health board where you have not been appointed by your authority
- housing - if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease and you do not have arrears of rent of more than 2 months
- school meals or school transport and travelling expenses, if you are a parent, guardian, grandparent of, or have parental responsibility for, a child in full-time education unless it relates particularly to the school that child attends

- decisions about statutory sick pay, if you receive or are entitled to receive it from your authority
- an allowance, payment or pension for members. I do not consider a member being put forward for election to a council office which attracts a Special Responsibility Allowance to have a prejudicial interest as I consider them to be covered by this dispensation.

3.39 These exemptions will **not** apply where the business you are considering is about determining an approval, consent, license, permission or regulation (see paragraph 12(3)). I consider these descriptions to refer to a narrow category of decisions, such as granting planning consent and licensing decisions. A wider interpretation of approval, for example, would cover almost every aspect of your authority's business and was clearly not intended.

3.40 If one of the exemptions applies you are **not** regarded as having a prejudicial interest. You still must disclose your personal interest **but you are allowed to participate in the item under discussion.**

### Example 34

Two members of a County Borough Council, who were sisters, were found by the Council's Standards Committee to have failed to declare both personal and prejudicial interests when they decided to allocate funds from their Members' Small Payments Scheme to a company, in respect of which one of the members was a non-paid director. During my investigation, one of the members disputed the fact that she had received advice from the Monitoring Officer about the disclosure of such interests. The other member had, despite receiving advice on the declaration of interests, falsely declared that she had no interest in the company on the nomination form. The Standards Committee considered the breaches of paragraphs 11 (disclosure of interests) and 14 (participation in relation to a disclosed interest) of the Code to be serious ones.

### Example 35

A Standards Committee determined that the circumstances in which a member's membership of a local organisation had ended, resulting in an acrimonious and ongoing dispute between her and the organisation (including solicitors' letters for the recovery of a debt) constituted a close personal association. It found that the nature of this association meant that the member had a prejudicial interest and that she had failed to declare this and withdraw from numerous meetings when a financial donation to the organisation had been discussed.

### Overview and Scrutiny Committees See paragraph 13



You may still be questioned  
on decisions taken

**Please note: this section does not apply to fire and rescue authorities, and national park authorities.**

3.41 You have a prejudicial interest in any business before an overview and scrutiny committee or sub-committee meeting where both of the following requirements are met:

- that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, board or another of your authority's committees, sub-committees, joint committees or joint sub-committees
- you were a member of that decision-making body at that time and you were present at the time the decision was made or action taken.

3.42 If the overview and scrutiny committee is checking a decision which you were involved in making, you may be called to attend the meeting to give evidence or answer questions on the matter, and you may do so provided it is acting under its statutory powers.

### What to do when you have a prejudicial interest See paragraph 14



- 3.43 If you have a prejudicial interest in any aspect of your authority's business you must not take part in the consideration of that business, or exercise executive or board functions or make representations, except in the circumstances described below.
- 3.44 Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.
- 3.45 **Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).
- 3.46 **This is unless you have obtained a dispensation from your authority's standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your authority for this purpose. However, where you attend a meeting you must immediately leave the room, chamber or place once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.
- 3.47 In addition, **you must not seek to influence a decision in which you have a prejudicial interest**. This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's

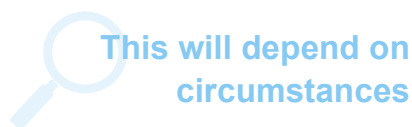
advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must not write or make any oral representations about the matter, except in the circumstances described above relating to representations by the public.

### Example 36

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### Do I have a statutory right to speak to the meeting?



3.48 The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. However, in limited circumstances, legislation may provide you with a right to speak (for example, licensing hearings and standards hearings) which the Code recognises. If so, you will be allowed to exercise that right to speak. Your Monitoring Officer should be able to confirm whether this is relevant to your case



### If I do not have a statutory right, will I be allowed to speak to the meeting?

You have the same rights as a member of the public

3.49 The Code aims to provide members with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest. These rights are usually governed by your authority's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.

3.50 If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. The Code also provides the right to submit written representations to the public meeting in these circumstances. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. You may not, however, take part in the discussion or observe the vote.

### When must I leave the place where the meeting is held?

You must withdraw at the earliest opportunity, unless permitted to make representations

3.51 You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.

3.52 If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately when the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?

You may influence other members simply by being present

3.53 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be

perceived to be capable of influencing the decision-making process. You should also take the advice of your Monitoring Officer before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 37

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### What if the public are not allowed to speak to the meeting on the matter?



- 3.54 If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.
- 3.55 This may be the case, for example, where your authority is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a meeting of your authority. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

### What if I am summoned to attend a scrutiny committee to discuss business in which I have a prejudicial interest?



3.56 If you are asked to attend by the committee exercising its statutory powers, then you may attend and participate in the meeting

#### Example 38

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her, the member having entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) (disclosure of interests) and 14(1) (participation in relation to a disclosed interest) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

### Executive or cabinet roles



**Please note: this section will not apply to fire and rescue authorities or national park authorities, unless in the latter case there are executive arrangements in place.**

3.57 If you are a leader or cabinet member of an authority operating executive arrangements, you must follow the normal rules for executive members who have personal and prejudicial interests. If your interest is personal but not prejudicial, you can advise the executive on the issue and take part in

executive discussions and decisions as long as you declare your interest. You can also exercise delegated powers in the matter as long as you record the existence and nature of your personal interest.

3.58 If you are an executive member who can take individual decisions, and you have a prejudicial interest in a decision, your authority may make other arrangements as set out in sections 14-16 of the Local Government Act 2000. This means that the decision can be taken by an officer, another cabinet member, the full executive, or a committee of the executive.

3.59 Although you have a prejudicial interest in a matter, you may be able to make representations, answer questions and give evidence as long as a member of the public would have the same rights, but you are barred from decision-making about that matter individually or in cabinet.

3.60 You also should not participate in any early consideration of it, or exercise any delegated powers in relation to it. If you have delegated powers in that area, you should refer the consideration and any decisions on the matter to the cabinet to avoid the perception of improper influence.

### Dispensations

**If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?**



**You could be granted a dispensation to speak and / or vote on a matter**

3.61 Standards committees have powers under regulations made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances

3.62 You can apply in writing to your authority's Standards Committee for a dispensation to speak and/or vote on a matter on one or more of the following grounds:

- at least 50 per cent of the authority or committee members would be prevented from taking a full part in a meeting because of prejudicial interests

- at least half of the cabinet would be so prevented (the leader should be included in the cabinet in calculating the proportion)
- in the case of a county/county borough council, the political balance at the meeting would be upset to such an extent that the outcome would be likely to be affected
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business is being considered by an overview or scrutiny committee and you do not have a pecuniary interest
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your authority's area
- the Committee considers it otherwise appropriate in all the circumstances. When introducing this last category of dispensation in 2016, the Welsh Government suggested, for example, that where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation under this category may enable the member to remain present in a meeting without participating in the business. This does not though limit the scope of this category of dispensation.

3.63 You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.

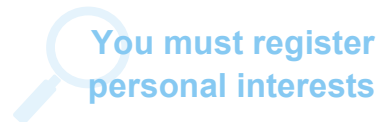
3.64 Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the authority. If failure to grant a dispensation will result in an authority or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

3.65 Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

## 4 Registration of Personal Interests

See paragraph 15

Key points



- 4.1 All members of relevant authorities have to provide a record of their personal interests in a public register of interests. If you are a member of a county or county borough council, fire authority or national park authority, you must tell your Monitoring Officer in writing within 28 days of taking office, or within 28 days of any new interest or change to your previously registered interests, of any interests which fall within the categories set out in paragraph 10(2)(a) of the Code, outlined below. The requirement to register such interests “up front” does not apply to a member of a community council. However, they must register such interests if they are required to disclose them when conducting the business of their council.
- 4.2 You must also register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your authority’s Monitoring Officer. As indicated in the guidance on paragraph 11 of the Code, your authority’s Monitoring Officer will have arrangements in place for this.

- 4.3 The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.
- 4.4 The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.
- 4.5 The categories of personal interest set out in paragraph 10(2)(a) of the Code that you must register include a description of:
- your job(s) or business(es)
  - the name of your employer or people who have appointed you to work for them
  - the name of any person who has made a payment to you in respect of your election or expenses you have incurred in carrying out your duties
  - the name of any person, company or other body which has a place of business or land in the authority's area, and in which you have a shareholding of more than £25,000 (nominal value) or have a stake of more than 1/100th of the share capital of the company
  - any contracts between the authority and yourself, your firm (if you are a partner) or a company (if you are a paid director or if you have a shareholding as described above) including any lease, licence from the authority and any contracts for goods, services or works. Where the contract relates to use of land or a property, the land must be identified on the register
  - any land and property in the authority's area in which you have a beneficial interest (or a licence to occupy for more than 28 days) including, but not limited to, the land and house you live in and any allotments you own or use

- any other bodies to which you were elected, appointed or nominated by the authority
- your membership or position of control or management in:
  - any bodies exercising functions of a public nature (described above), or directed to charitable purposes, or whose principal purposes include the influence of public opinion or policy, including any political party or trade union
  - any private club, society or association operating within your authority's area

When you are completing your Register of Interests your Monitoring Officer will be able to assist you on how best to describe your interests. The description must be clear enough to maintain openness and public confidence in any business of the Council you may influence or decisions you take on behalf of the Council, whilst also protecting your personal information and safety. For example, when describing property which you own or rent which you live in, the description may include the street name or postcode in which your property is situated (as opposed to your full address).

### Sensitive information

See Paragraph 16

Discuss 'sensitive' information  
with your Monitoring Officer

#### Key points

- 4.6 You may be exempt from having to disclose and register certain information on your authority's register of interests if the Monitoring Officer agrees that it is 'sensitive information'.
- 4.7 'Sensitive information' is information the disclosure of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).
- 4.8 You should provide this information to your Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

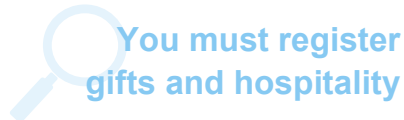


- 4.9 If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Monitoring Officer within 28 days asking them to include the information in the register.

### Gifts and hospitality

See Paragraph 17

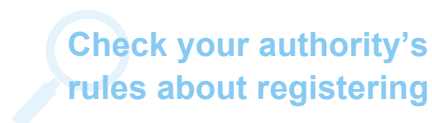
#### Key points



- 4.10 You must register any gifts or hospitality worth more than the amount specified by your authority that you receive in connection with your official duties as a member, and the source of the gift or hospitality, within 28 days.

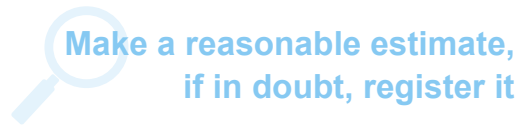
- 4.11 You must register the gift or hospitality and its source within 28 days of receiving it. Like other interests in your register of interests, you may have a **personal interest** in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person and then decide whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your authority's gifts and hospitality policy.

#### Is the gift or hospitality connected to my official duties as a member?



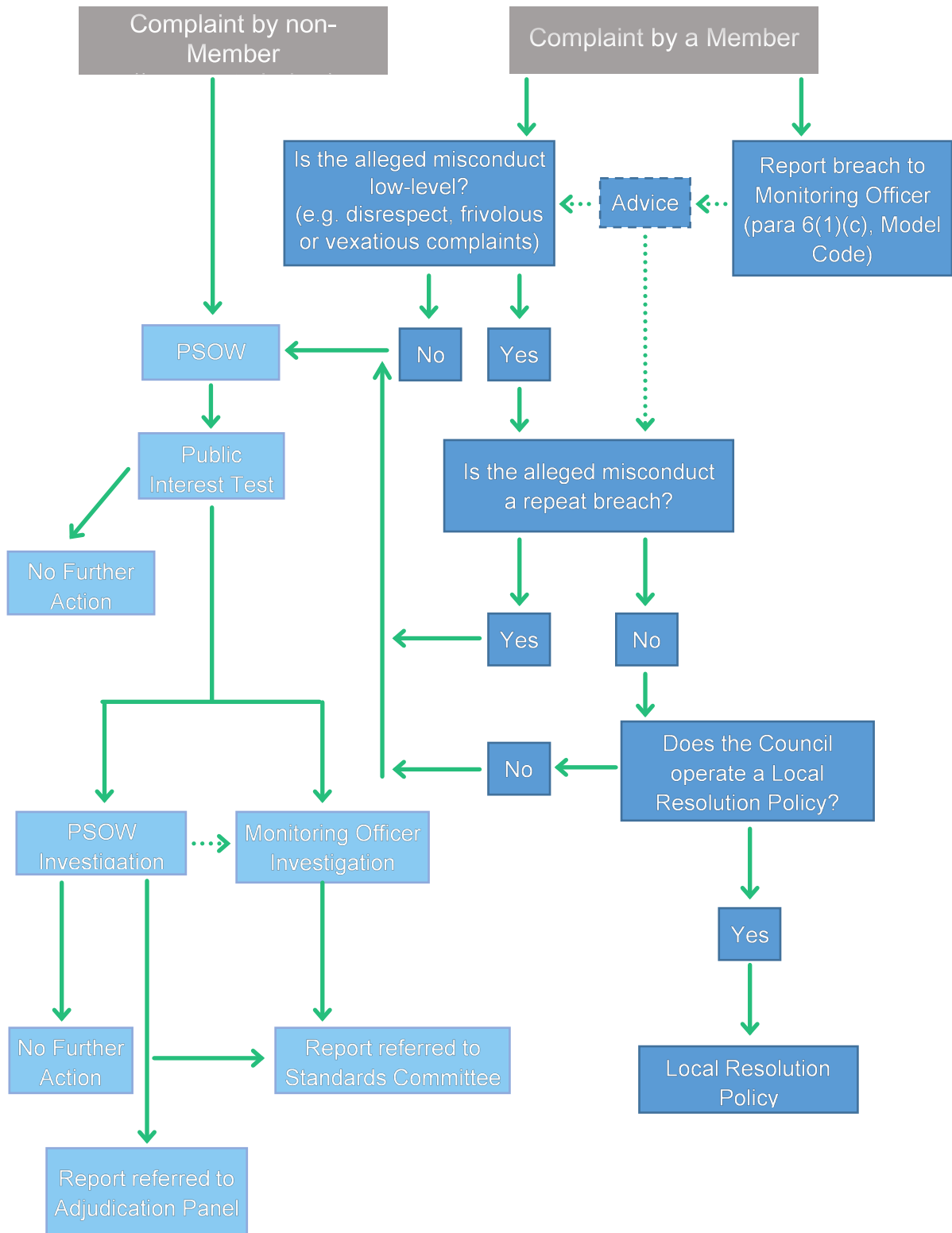
- 4.12 You should ask yourself, "would I have been given this if I was not a member of the authority?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Monitoring Officer.
- 4.13 You do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your authority). However, you should always register a gift or hospitality if it could be perceived as something given to you because of your position as a member, or if your authority requires you to do so.

### What if I do not know the value of a gift or hospitality?



- 4.14 The general rule is, if in doubt as to the value of a gift or hospitality, you should register it, as a matter of good practice and in accordance with the principles of openness and accountability in public life. You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your authority or over should be registered.
- 4.15 The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Code of Conduct Complaints Overview



\* Note: an officer considering a complaint should take advice from the Council's Monitoring Officer / Clerk about the relevance of the Council's member / officer relations policy, or local resolution policy, before exercising their right to complain to the Public Services Ombudsman for Wales.

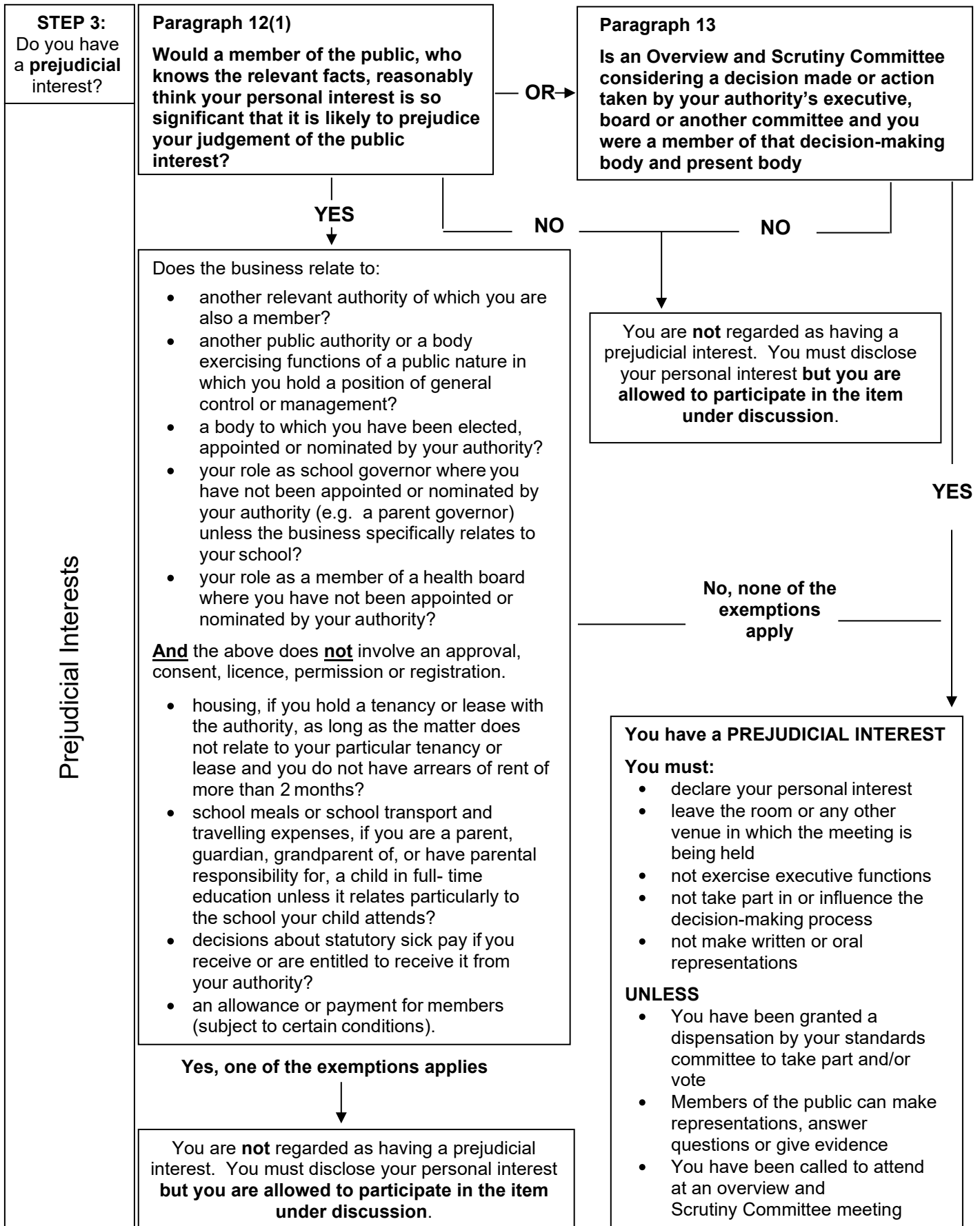
Personal Interests

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.

<p><b>STEP 1</b> Does the Code apply?</p>	<p><b>Are you:</b></p> <ul style="list-style-type: none"> <li>conducting the business of your authority?</li> <li>acting, claiming to or giving the impression that you are acting, in your official capacity as a member or representative of your authority?</li> <li>acting as your authority's appointee or nominee on any other body without its own code of conduct?</li> </ul>				
<p><b>STEP 2</b> Do you have a personal interest?</p>	<p>The Code <b>does</b> apply. Continue to Step 2.</p>	<p>The Code <b>does not</b> apply. No further action required.</p>			
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Personal Interests</p>	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><b>Paragraph 10(2)(a)</b> <b>Does the business relate to or is it likely to affect:</b></p> <ol style="list-style-type: none"> <li>your employment or business?</li> <li>your employer, firm or company?</li> <li>any person, other than your authority, who has paid towards your election or expenses as a member?</li> <li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li> <li>any contract that your authority makes with your company or a company in which you hold shares? (as described in 4)</li> <li>any land in which you have an interest?</li> <li>any land let by your authority to your company? (as described in 4)</li> <li>any body to which you have been elected or appointed by your authority?</li> <li>any:                             <ul style="list-style-type: none"> <li>public authority or body exercising functions of a public nature?</li> <li>company, industrial and provident society, charity or body directed to charitable purposes?</li> <li>body whose main role is influencing public opinion or policy?</li> <li>trade union or professional association?</li> <li>private club, society or association operating in your authority's area</li> </ul> </li> <li>in which you have membership or are in a position of general control or management? or</li> <li>any land in your authority's area which you have a license to occupy for at least 28 days?</li> </ol> </td> <td style="width: 10%; text-align: center; vertical-align: middle;"> <p><b>OR</b></p> <p>← →</p> </td> <td style="width: 40%; vertical-align: top;"> <p><b>Paragraph 10(2)(c)</b> <b>Might a decision be reasonably regarded as affecting (to a greater extent than other people in your ward/authority's area):</b></p> <ul style="list-style-type: none"> <li>your well-being or financial position?</li> <li>the well-being or financial position of any person who lives with you or with whom you have a close personal association?</li> <li>the employment/ business, employer, or company of any person who lives with you or with whom you have a close personal association?</li> <li>any company in which any person who lives with you or with whom you have a close personal association owns shares?</li> <li>any public authority; company; charity; lobby group; trade union or professional association; or private club, society or association operating in your authority's area; in which any person who lives with you or with whom you have a close personal association holds a position of general control or management.</li> </ul> </td> </tr> </table>		<p><b>Paragraph 10(2)(a)</b> <b>Does the business relate to or is it likely to affect:</b></p> <ol style="list-style-type: none"> <li>your employment or business?</li> <li>your employer, firm or company?</li> <li>any person, other than your authority, who has paid towards your election or expenses as a member?</li> <li>any company in which you hold shares with the nominal value of more than £25000 or where your holding is more than 1% of the total share capital, which has premises or land in your authority's area?</li> <li>any contract that your authority makes with your company or a company in which you hold shares? 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	<p><b>If YES, you have a PERSONAL INTEREST</b></p>	<p><b>If NO, you do not have a personal interest</b></p>			
<p><b>You must:</b></p> <ul style="list-style-type: none"> <li>declare your interest and the nature of that interest:                             <ul style="list-style-type: none"> <li>at meetings</li> <li>when making written representations</li> <li>when making oral representations (and confirm it in writing within 14 days)</li> <li>consider if you have a prejudicial interest (see Appendix 3)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>If the business is before an Overview or Scrutiny Committee consider if you have a prejudicial interest</li> <li>Otherwise, <b>no further action is required</b></li> </ul>				

Prejudicial Interests

Questions to ask yourself. If in doubt you should ask your Monitoring Officer.



## Contact us

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Further information about the service offered by the  
Public Services Ombudsman for Wales can also be found at  
[www.ombudsman.wales](http://www.ombudsman.wales)

# **The Code of Conduct**

for members of local authorities in Wales

**Guidance from the  
Public Services Ombudsman for Wales**  
for members of community and town councils

## Preface

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

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

This version of my guidance is aimed at community and town councillors (referred to throughout this guidance as community councillors). It differs in parts from my separate guidance to county councillors and members of other relevant authorities, as it recognises and is tailored to the different nature of the role that community councillors undertake in their communities.

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

Where councillors, clerk and chair of the council work together effectively as a team, they combine energies and skills to deliver real benefits to the community they serve. Good working relationships, mutual respect and an understanding of their different roles are vital. Conflict between these key players, especially during meetings in front of the press and public can damage the council and undermine its relationship with the people served by the council.

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

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



This guidance aims to provide you with a general understanding of the Code and its requirements. Section 1 provides an introduction to the Code and its enforcement, including the powers of sanction available to standards committees and the Adjudication Panel for Wales. Section 2 outlines your obligations under the Code, referencing specific paragraphs for further information. Sections 3 and 4 deal with general issues surrounding the disclosure and registration of interests under Parts 3 and 4 of the Code respectively. You can obtain a copy of the Code adopted by your Council by contacting your Clerk.

The guide is intended to help you to understand the Code and how it applies, but it cannot hope to cover every conceivable circumstance. Ultimately, it is your responsibility to take specific advice from your Clerk and to make a decision as to the most suitable course of action. The Monitoring Officer of the principal council<sup>3</sup> for the area will also be able to provide advice if the matter is complex and your Clerk is unable to do so.

The guidance explains the revised two-stage test that I will consider when deciding whether to investigate or to continue with an investigation of a breach of the Code, to the stage of referring the matter to a standards committee or the Adjudication Panel for Wales. It also includes guidance on the use of social media and political expression, and aims to provide assistance to members on the issue of interests, which some members find challenging.

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

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

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<sup>3</sup> A county or county borough council in Wales

As a member you will be offered training on the Code whether from your Clerk, a Monitoring Officer or a representative body. I expect all members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public life. I would urge members to avail themselves of any local arrangements that may be in place for dealing with complaints about their fellow members, which are proving an effective means of resolving many of these cases.

Despite a recent reduction in the number of complaints I have received about community councillors, I continue to be concerned about the number of low-level, tit-for-tat complaints which border on frivolity, or which are motivated by political rivalry or clashes of personality, rather than true Code of Conduct issues. I welcome the fact that the number of these low-level complaints has reduced; however, the number I receive is still too high. Whilst these complaints appear to have been generated by a small number of members, in these challenging times, it is increasingly important to ensure the effective use of my office's resources and that any investigation undertaken is proportionate and required in the wider public interest. I take a very dim view of complaints of this nature and have, where appropriate, advised members that making a complaint which is frivolous, vexatious or malicious is itself a breach of the Code.

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

During the course of my review of this guidance, the Welsh Government announced that it was commissioning a review of the local government ethical framework. My team and I look forward to contributing to that review and I will revisit this guidance in light of its outcome, when known.

A handwritten signature in black ink, appearing to read 'Nick Bennett', written over a vertical line.

Nick Bennett  
Public Services Ombudsman for Wales  
May 2021

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

Separate guidance is available for elected, co-opted and appointed members of county councils, fire and rescue authorities, national park authorities and police and crime panels in Wales.

## **Acknowledgement**

I would like to thank the legal services department of Rhondda Cynon Taf County Borough Council for the use of its flowchart on interests.

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## 1 Introduction

- 1.1 The Local Government Act 2000 created a new ethical framework for local government in Wales. It created a power for the National Assembly for Wales (now known as the Welsh Parliament or Senedd Cymru) to issue a model Code of Conduct to apply to members and co-opted members (with voting rights) of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the Government of Wales Act 2006. On 1 April 2016, Welsh Ministers issued a number of revisions to the current Model Code of Conduct (issued in 2008)<sup>4</sup> which all relevant authorities were required to adopt.<sup>5</sup>
- 1.2 For this purpose, a relevant authority is defined as a county or county borough council, a community council, a fire and rescue authority or a national park authority in Wales. The ethical framework and the model Code of Conduct also apply to members of a police and crime panel in Wales by virtue of regulations made by the UK Government under the Police Reform and Social Responsibility Act 2011.<sup>6</sup>
- 1.3 Authorities were required to adopt the Code in its model form in its entirety, but could make additions to the Code, provided these were consistent with the Model. This is intended to give certainty to members and the public as to what standards are expected. It helps to ensure consistency throughout relevant authorities, avoiding confusion for members on more than one authority and for the public.
- 1.4 Standards committees of principal councils are required to assist members and co-opted members of community and town councils in their area to observe the Code, and to arrange for advice and training to be provided. Such training may be provided by Monitoring Officers or by One Voice Wales, the representative body for community and town councils in Wales. One Voice Wales has developed bespoke training on the Code tailored to the needs of community and town council members, which has been endorsed by local authority Monitoring Officers. **I expect all members to attend training and take advice on conduct matters where it is offered.**

<sup>4</sup> Local Authorities (Model Code of Conduct) (Wales) Order 2008, SI 2008 No. 788 (W.82)

<sup>5</sup> Local Authorities (Model Code of Conduct) (Amendment) Order 2016, SI 2016 No. 84 (W.38)

<sup>6</sup> Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012, SI 2012 No. 2734

- 1.5 Section 67 of the Local Government and Elections (Wales) Act 2021, which comes into force on 5 May 2022, places a duty on community and town councils to prepare a training plan for their members and officers. This will provide the means for identifying training needs and opportunities, including on the Code of Conduct.
- 1.6 Sanctions guidance issued by the President of the Adjudication Panel for Wales (“the Adjudication Panel”) indicates that a refusal, or failure, to attend training on the Code will be regarded by its tribunals as an aggravating factor when assessing the sanction to be applied to a member found to have breached the Code.
- 1.7 Whilst community councillors do not act on decision-making bodies such as planning committees, you will be called upon to take decisions on the allocation of funding from your precept and to offer guidance, drawing on your valuable local knowledge, to the County Council about the impact of planning applications. It is imperative, therefore, that you are fully aware of the Code and its implications for your decision-making and indeed, whether you should be involved in making a decision. In light of this, I recommend training on the Code for all new councillors as early in their term of office as possible and all councillors should undertake refresher training from time-to-time.
- 1.8 As a member, when you sign your declaration of acceptance of office, you are confirming that you will observe the Code. It is your personal responsibility to ensure that you understand your obligations under the Code and act in a way which shows that you are committed to meeting the high standards of conduct that are expected of you as a member. Ultimately, as a member, you are responsible for the decisions you take and can be held to account for them. However, this does not imply that you can take decisions which breach the Code or are contrary to relevant advice from your Council’s Clerk or other officers simply because the decision is yours to take. This guidance explains the constraints you are expected to act within to ensure members of the public can be confident in the way in which authorities in Wales reach their decisions.

## Investigations: Assessing the Public Interest

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

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

1.11 Public interest factors include:

- the seriousness of the breach
- whether the member deliberately sought personal gain for themselves or another person at the public expense
- whether the circumstances of the breach are such that a member has misused a position of trust or authority and caused harm to a person
- whether the breach was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity
- whether there is evidence of previous similar behaviour, or the member has previously been found to have breached the Code by a standards committee or the Adjudication Panel for Wales
- whether there is evidence of a course of conduct, the conduct is ongoing, or the misconduct is escalating
- whether the investigation or referral to a standards committee or the Adjudication Panel for Wales is required to maintain public confidence in elected members in Wales



- whether investigation or referral to a standards committee or the Adjudication Panel of Wales is a proportionate response, namely, whether it is likely that the breach would lead to a sanction being applied to the member (I will take account of the outcomes of previous cases considered by standards committee across Wales and the Adjudication Panel for Wales), and whether the use of resources in carrying out an investigation or hearing by a standards committee or the Adjudication Panel for Wales would be regarded as excessive when weighed against any likely sanction.

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

### Legal Precedents

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

1.14 In the first case, the Adjudication Panel dismissed an appeal by a Community Councillor against the decision of the local Standards Committee that he had failed to show respect and consideration for others by posting various online comments criticising the other members and the way in which the Council was run. The High Court found that, whilst the comments were sarcastic and mocking and the tone ridiculed his fellow members, because the majority of the comments related to the way in which the Council was run, how its decisions were recorded and the competence of the members, the comments were “political expression”. The ruling said no account had been taken of the need for politicians to have “thicker skins”. In view of the member’s freedom of expression and the fact that the majority of comments were directed at fellow councillors,

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

the finding of a breach in this case was a disproportionate interference with the member's rights under Article 10 of the European Convention on Human Rights (ECHR). The Adjudication Panel's decision was, therefore, set aside.

- 1.15 In the second case, the High Court heard an appeal against the decision of the Adjudication Panel that a member of a County Council had committed 14 breaches of the Code by failing to show respect and consideration for officers of the Council, using bullying behaviour, attempting to compromise the impartiality of officers and bringing the member's office into disrepute. The breaches occurred over a period of two years and included comments and conduct which were critical of, and threatening towards, both senior and junior officers. The Court found that all of the breaches were intentional and some of the misconduct was serious. Some of the breaches involved deliberately dishonest and misleading conduct towards officers, other members and members of the public. In respect of officers, much of the conduct was intended to undermine them personally and was performed when officers were trying to do their jobs, which the member was intent on frustrating. All but three of the breaches found by the Adjudication Panel were upheld by the Court.
- 1.16 One of the important issues that had to be determined by the Court was the scope of, and legitimate restrictions to, a politician's right of freedom of expression under Article 10 of the ECHR and at common law. The Court reiterated that the law requires politicians to have thick skin and be tolerant of criticism and other adverse comment. However, the Court also noted that while public servants are open to criticism, including public criticism, it is in the public interest that they are not subject to unwarranted comments that disenable them from performing their public duties and undermine confidence in the administration.
- 1.17 I have included guidance consequent on these judgments, particularly conduct towards junior officers, in the sections dealing with the relevant paragraphs of the Code.

- 1.18 Further guidance on the process I use for investigating complaints, including a factsheet on ‘Assessing Public Interest’ and the ‘Code of Conduct Casebook,’ which summarises cases I have investigated, is available on my website [www.ombudsman.wales](http://www.ombudsman.wales)
- 1.19 In this guidance I have tried, where possible, to use examples of cases which have been referred to me and which are relevant to community and town councils. Where this has not been possible, I have given examples of theoretical scenarios that indicate how the Code may be breached while you are undertaking your role.

### Local Resolution Process

- 1.20 Local authorities across Wales have implemented local resolution procedures to deal with low-level complaints which are made by a member against a fellow member. In some cases, the arrangements also cover complaints made about members by officers. These arrangements are proving to be an effective and proportionate means of resolving many of these kinds of complaints.
- 1.21 Local resolution can also play an important role within community and town councils where, all too, often low-level disputes between members have escalated to the point where the whole council has been brought into disrepute in the eyes of the public. I am pleased, therefore, that One Voice Wales has produced a ‘Model Local Resolution Protocol for Community and Town Councils’ to support councils in resolving minor disputes between members and between members and officers, in a way which is proportionate to the scale and resources of the sector. I strongly encourage all community and town councils to adopt the protocol. The Model Protocol is available from One Voice Wales or my website.
- 1.22 Typically, complaints which can be dealt with through local resolution will be about alleged failures to show respect and consideration for others as required by paragraph 4(b) of the Code, or the duty not to make vexatious, malicious or frivolous complaints against other members under paragraph 6(1)(d) of the Code. Whilst a member may still complain directly to me about a fellow member, if the matter being complained about concerns paragraphs 4(b) and 6(1)(d), I am likely to refer the matter back to the

Council's Clerk for consideration under the local resolution protocol, where this has been adopted by the Council. In my view, such complaints are more appropriately resolved informally and locally in order to speed up the complaints process and to ensure that my resources are devoted to the investigation of serious complaints.

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

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

1.25 An overview of the complaints process is at Appendix 1 to this guidance.

### Standards Committee

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

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

1.28 When I refer a case to a standards committee, its role is to decide whether a member has breached the Code and, if so, whether a sanction should be imposed. Adjudication Panel for Wales hearings take place in public, except where a tribunal considers that publicity would prejudice the interests of justice. In my view, standards committee hearings should also be conducted in public, unless there are valid reasons for not doing so, to promote public confidence in standards in public life. Where a standards committee concludes that a member or co-opted member has failed to comply with the relevant council's code of conduct, it may determine that:

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

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

1.30 The Local Government and Elections (Wales) Act 2021 places new duties on the standards committee of a county and county borough council in Wales, with effect from 5 May 2022. The committee will have the additional function of monitoring and providing support to political group leaders within principal councils in undertaking their new duty, under the 2021 Act, to promote high standards of conduct by members of their group. Each standards committee will also be required to make an annual report to their authority describing how the committee's functions have been discharged and providing an overview of conduct matters generally within the authority. The 'Explanatory Notes' to the 2021 Act indicate that the requirement on a principal council's standards committee to make a report includes a requirement to make a report to any community and town councils in its area.

## Adjudication Panel for Wales

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

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

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

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

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

- 1.35 Where either a standards committee or the Panel suspends or partly suspends a member or co-opted member, that member is still subject to the Code, in particular the provisions set out in paragraphs 6(1)(a) (bringing the office of member or authority into disrepute) and paragraph 7 (improperly using the position of member).
- 1.36 Further information about the role and procedures of the Adjudication Panel and its tribunals, including guidance on sanctions, can be found on its website: [www.adjudicationpanel.gov.wales](http://www.adjudicationpanel.gov.wales)

### The Role of the Clerk

- 1.37 The Clerk is employed by your Council and undertakes a number of tasks including providing administrative support to the Council, advising on the development and implementation of policies and procedures and taking action to implement the Council's decisions. The Clerk has a complex role which may entail having to act as a project manager, personnel director, public relations officer and finance administrator. The Clerk acts in a supporting role for you and your fellow councillors and is the person you should turn to in the first instance if you need any advice. The best councils will have a Clerk and councillors who work as a team within a culture of mutual respect and consideration to serve their community. The Clerk is not just a secretary and is not at the beck and call of the Chair or individual members of the Council; the Clerk is answerable only to the Council as a whole. Whilst you may question the advice you are given by the Clerk, you must do so in a constructive and objective manner.
- 1.38 The Clerk will be able to advise councillors on relevant legislation, including matters relating to the Code and the Council's standing orders. The Clerk will work closely with the Chair of the Council to ensure that appropriate procedures are followed at meetings and that all necessary information is available to councillors so that they may make informed decisions. If necessary, Clerks may approach the relevant principal council's Monitoring Officer (see below) for advice.
- 1.39 The Clerk also plays an important role in facilitating the operation of the Model Local Resolution Protocol, where adopted, in conjunction with the Chair or Vice Chair of your Council.



1.40 The Clerk is an employee of the Council and is not required to abide by the Code. However, the Clerk and other Council employees are subject to a separate code of conduct set out in the 'Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001'. Under Section 82 of the Local Government Act 2000, the terms and conditions of appointment of the Council's employees are deemed to incorporate this Code. Any issues regarding the performance of the Clerk or other employees are personnel matters and should be addressed using appropriate employment procedures. The Ombudsman cannot consider complaints regarding the performance of your Council's employees; this is a matter for the Council as the employer.

### The Role of the Monitoring Officer

1.41 The Monitoring Officer is employed by the principal council for the area. Among other things, the Monitoring Officer has an important role in ensuring the lawfulness and fairness of decision-making by the principal council. The Monitoring Officer also contributes to the promotion and maintenance of high standards of conduct through the provision of support to the Standards Committee and members of the Council.

1.42 Monitoring Officers endeavour to provide support and guidance to community and town councils on matters of conduct, which may include the provision of training. However, this can have significant resource implications, particularly in areas with high numbers of community and town councils, and you should always ask your Clerk in the first instance for any guidance or information. The Monitoring Officer may be able to provide information if your Clerk is unavailable or you need assistance with a more complex query.

### The Principles

1.43 The Local Government Act 2000 empowered the National Assembly to issue principles to which you must have regard in undertaking your role as a member. The Code is based on these Principles which are designed to promote the highest possible standards. These Principles draw on the 7 Principles of Public Life which were first set out in the 1995 Nolan Report "Standards in Public Life". Three more were added to these in the local



government principles in Wales: a duty to uphold the law, proper stewardship of the Council's resources and equality and respect for others.

1.44 Members of community and town councils give generously of their time and commitment for the benefit of their communities. The Principles provide a framework for channelling your commitment in a way which will reflect well on you and your Council, and which will give your communities confidence in the way that your Council is governed.

1.45 The individual sections of the Code are designed to support the implementation of the Principles. For example, the Selflessness principle is covered by Section 7 of the Code – Selflessness and Stewardship. Paragraph 2(2) of the Code states that you should read it together with the Principles, which are prescribed in a separate statutory instrument<sup>8</sup>. For ease of reference, they are replicated below.

### **1. Selflessness**

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

### **2. Honesty**

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

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

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

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

### **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.

1.46 The Code is consistent with, and provides for the practical application of, these Principles. The Principles offer a sound basis for your conduct in office and I encourage members to have regard to them **at all times**. Given the close association between the Principles and the Code, if you follow the Principles as a basis for your conduct, you are less likely to behave in a way that will constitute a failure to comply with the Code.

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



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

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

## When does the Code apply?

1.49 The Code applies:

- **Whenever you act in your official capacity**, including whenever you are conducting the business of your Council or acting, claiming to act, or give the impression you are acting, in your official capacity as a member or as a representative of your Council (paragraph 2(1)(a)-(c)).
- **At any time**, if you conduct yourself in a manner which could **reasonably** be regarded as bringing your office or your authority into **disrepute**, or if you **use or attempt to use your position improperly to gain an advantage or avoid a disadvantage** for yourself or any other person, or if you **misuse your Council's resources** (paragraphs 2(1)(d), 6(1)(a) and 7).

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

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

1.52 If you refer to yourself as 'councillor' in any form of communication, the Code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role, then the Code will apply to any comments you make there. Even

if you do not refer to your role as councillor, your comments may have the effect of bringing your office or authority into disrepute and could therefore breach paragraph 6(1)(a) of the Code.

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

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

### **Example 1**

A complaint was received that a councillor was intoxicated and behaving inappropriately at a street party. It was established that the councillor did not have to undertake any action on behalf of the Council at the party. In my view, therefore, she attended the party as a member of the public and as she did not seek to rely on her status as a councillor in any way only paragraph 6(1)(a) (disrepute) of the Code applied at the time. Whilst her behaviour may have been considered inappropriate by some, it was not relevant to her role as a councillor and in my view did not bring the Council into disrepute, so was not indicative of a breach of paragraph 6(1)(a). I did not investigate this complaint.

### **Example 2**

Whilst acting in a personal capacity, a member of a county council was convicted of criminal offences relating to a failure to maintain accurate animal records and the disposal of animal carcasses. The Standards Committee determined that, due to the seriousness of the convictions, the member had brought the authority into disrepute in breach of paragraph 6(1)(a).

## Example 3

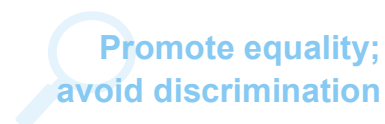
A Community Councillor, whilst acting in a personal capacity, posted a number of messages on Facebook about high-profile politicians which the Adjudication Panel found were extreme, threatening and which promoted violence towards the subjects of the messages. The Panel noted that whilst politicians were expected to possess “thick skins” and display a greater tolerance than ordinary citizens, such tolerance should not have to extend to personal, inflammatory and egregious comments such as those that had been posted. The Panel found the comments were not ‘political expression’, which might be afforded protection under the ECHR, and were sufficiently serious in nature as to bring the office of member and the Council into disrepute in breach of paragraph 6(1)(a).

The Panel found that, in accordance with paragraph 2(1)(d) of the Code, the requirement in paragraph 6(1)(a) for the Councillor not to bring his office or authority into disrepute applied, regardless of the fact that he was acting in a personal capacity. As the comments were made in a private capacity and did not comprise political expression, they did not attract the enhanced protection afforded to politicians under the ECHR. However, the Panel concluded that even if enhanced protection had applied, the comments were so extreme and egregious that a finding of a breach of paragraph 6(1)(a) of the Code would nevertheless have been justified.

## 2 General obligations under the Code of Conduct

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

### Equality See paragraph 4(a)



- 2.2 **You must carry out your duties with due regard to the principle that there should be equality of opportunity for all people regardless of their gender, race, disability, sexual orientation, age or religion.**

This obligation underpins the principle that members must have due regard to the need to promote equality of opportunity for all people.

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

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

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

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

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

### **Example 4**

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

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

### **Example 5**

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



## Treating others with respect and consideration

See paragraph 4(b)

Political comments can attract Article 10 rights

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

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

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

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

2.11 I may also decline to investigate a complaint where the member has raised “political” issues with officers, for example, the Clerk to a council. This would not, however, include threats to an officer’s position or wellbeing. Recent case law has confirmed that council officers should be protected from unwarranted comments that may have an adverse effect on good administration and states that it is in the public interest that officers are not subject to unwarranted comments that disenable them from carrying out their

duties or undermine public confidence in the administration. That said, officers who are in more senior positions, such as the Chief Executive of a principal council, will also be expected to have a greater degree of robustness. However, I am concerned about the number of complaints I have received which allege inappropriate behaviour by some community councillors towards their Council's Clerk. Given the very scale and nature of community and town councils, there is a distinction to be made about the role and status of a Chief Executive or other senior officer in a principal council and that of a Clerk. I will consider carefully any complaints of alleged inappropriate behaviour by members towards Clerks, and will investigate those complaints which are supported by appropriate evidence that a member has gone beyond what might be regarded as reasonable challenge.

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

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

### **Example 6**

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

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

### **Example 7**

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

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


### **Example 8**

The Chair of a Community Council raised a complaint at a meeting of the Council that he had not seen the text of a letter prior to it being issued (as previously agreed) in his name by the Clerk. The Chair was unhappy with the content of the letter when he eventually saw it. It was alleged that it was inappropriate for him to have raised the matter, without notice, in a public forum and in doing so he had upset and publicly humiliated the Clerk.

A Standards Committee concluded that it was not inappropriate for the member to raise the issue in a public meeting so that his views could be publicly identified. The Standards Committee considered that his line of questioning and approach did not demonstrate a failure to show respect and consideration for the Clerk, but were intended to ensure that the Council's interests were protected and his concerns about the content of the letter were addressed. The Standards Committee, therefore, found no breach in relation to this aspect of the complaint.

(See paragraph 4(c) below for further examples)

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

 Consider your conduct from the other person's perspective

**2.14 You must not use any bullying behaviour or harass any person including other councillors, council officers (the Clerk or Proper Officer) or members of the public.** Harassment is repeated behaviour which upsets or annoys people. Bullying can be characterised as offensive, intimidating, malicious, insulting or humiliating behaviour. Such behaviour may happen once or be part of a pattern of behaviour directed at a weaker person, or a person over whom you have some actual or perceived influence. Bullying behaviour attempts to undermine an individual or a group of individuals, is detrimental to their confidence and capability, and may adversely affect their health.

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

#### **Example 9**

A Community Councillor disagreed with the County Council's arrangements for the enforcement of parking breaches within the town. The Councillor used disrespectful and abusive language and behaved in a bullying and intimidating manner towards Council Civil Enforcement Officers on four

occasions. He also sought to use his position as a councillor improperly in relation to a parking offence. A Standards Committee found that the Councillor had breached paragraph 4(c) of the Code, as he had pursued a course of conduct of threatening behaviour towards the County Council employees. The Standards Committee also established that the Councillor breached paragraphs 4(b) (respect and consideration), 7(a) (improper use of position) and 6(1)(a) (disrepute) of the Code.

### Example 10

A member of a County Council telephoned a private care home contracted to provide services to the Council to say that he wanted to attend the home that day to visit a child in its care. He was advised by a care worker that he could not do so as he was not named on the child's care plan. The member said that he would attend that day with a colleague. He was advised that the police would be called if he did so. At a later date, the member attended the head office of the care home at the invitation of, and to provide support to, the father of the child with the aim of attending a scheduled therapy meeting. The therapy meeting was cancelled as a consequence of the member's unauthorised presence. The member's actions were found to be in contravention of his Council's adopted 'Protocol on the Role of Elected Members in Safeguarding Vulnerable Children and Adults'. The Council's Standards Committee found the member's interaction with the care home staff had become increasingly hostile. His conduct during the course of the telephone call was intended to undermine the care worker in her role and to exert pressure on her to allow him to attend the care home. The Standards Committee found there was a power imbalance between the care worker and the member, who had sought to use his position inappropriately in an attempt to gain access to the child. The Standards Committee found the member had used bullying behaviour and harassment in breach of paragraph 4(c) of the Code.

- 2.16 You need to ensure that your behaviour does not cross the line between being forceful and bullying. There can be no hard and fast rules governing every set of circumstances, but the relative seniority of the officer will be a factor in some cases. As outlined in my comments about paragraph 4(b) (respect and consideration) of the Code, very senior officers within principal councils can be involved in robust discussion with members and be well placed to put their own point of view forcefully. However, the same is not

necessarily true of the Clerk in the context of community and town councils and members need to be aware of this. This is not to say that I condone the bullying of senior officers, only that the greater the power difference between the officer and the member, the greater the likelihood that the officer will consider behaviour to constitute bullying.

- 2.17 The High Court has found that there is a public interest in protecting public confidence in unelected public servants which is to be balanced against the interests of open discussion on matters of public concern. It also found that all members should equally respect the mutual bond of trust and confidence between themselves and the officers which is crucial to good administration.
- 2.18 Your Council should have an appropriate mechanism for expressing concern about the performance of an officer and it is important that you raise issues about poor performance in the correct way and proper forum. Raising such issues in the context of a meeting with others present, especially if they are from outside bodies or are members of the public, is not acceptable. Neither is it acceptable to do so in the media, in your own publications or using blogs, tweets, Facebook or other electronic means. If your criticism is a personal attack or of an offensive nature, you are likely to cross the line of what is acceptable behaviour.
- 2.19 The Adjudication Panel for Wales and standards committees have made a number of findings against members who have sought inappropriately to use their position of power relative to junior officers to influence the actions of those officers, or whom have made unwarranted comments about the performance or actions of officers.

### **Example 11**

During the discussion of an unrelated matter, a member of a Community Council raised in a public meeting of the Council questions about the Clerk which were personal and focused on the Clerk's remuneration, expenses, hours worked and other occupations. This was in contravention of the Council's standing orders, which provided that any questions relating to, among other things, the appointment, conduct and remuneration of any person employed by the Council should not be considered until the Council had decided whether or not the press and public should be excluded.

A Standards Committee found that it was not appropriate for the member to have raised the matter, which should have been considered in private, in a public meeting. The Standards Committee concluded that the member had caused the Clerk embarrassment and upset and had demonstrated a lack of respect and consideration for her, in breach of paragraph 4(b) of the Code. The action by the member was not a sustained course of conduct, but a one-off event directed at an individual in a weaker position of power. As such, it could also reasonably be regarded as bullying, in breach of paragraph 4(c) of the Code.

### **Example 12**

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

### **Example 13**

I received a complaint that a member of a Town Council had acted in a disrespectful and bullying manner towards the Council's Clerk when questioning the accuracy of minutes and advice given at meetings of the Council. Witnesses were divided on whether the member's manner could be described as argumentative and obstructive, or plain talking and



professional, but the general consensus was that he communicated with everyone in this way and did not appear to be doing so only to the Clerk.

2.20 It is not my role to inhibit robust political debate. Following my analysis of the evidence, I was not persuaded that there was evidence to suggest that the content of the discussions at the meetings was inappropriate. There was no evidence of behaviour which was personal, rude or abusive towards the Clerk. I was also not persuaded that the tone and content of the emails which concerned Council business, although challenging and questioning at times, would amount to disrespectful or bullying behaviour. I, therefore, concluded that no action needed to be taken.

### Compromising the impartiality of officers of the council

See paragraph 4(d)



#### 2.21 **You must not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, your Council.**

You should not approach anyone who works for, or on behalf of, the Council with a view to pressurising them to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality. For example, you should not ask officers to help you prepare party political material, or to help you with matters relating to your private business. You should not provide or offer any incentive or reward in return for acting in a particular way or reaching a particular decision or threaten someone if they are not minded to act in a particular way. If a member develops a close personal relationship with an officer, this becomes a personal and possibly a prejudicial interest under the Code, which may affect your ability to participate in some matters being considered by the Council (see section 3 of this guidance).

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



### Hypothetical Scenario

- 2.23 The Clerk is responsible for allocating allotments from a waiting list, the allotments are very popular and vacancies very rarely arise. The Clerk advised the Council that an allotment had become vacant and that they would consult the list and allocate the allotment to the person who had been waiting the longest in accordance with the Council's allotment allocation procedure. A Councillor's father had been waiting for an allotment for almost seven years.
- 2.24 The Councillor approached the Clerk after the meeting and asked to see the list. He noted that one person was ahead of his father by only one month. The Councillor asked the Clerk to give the vacant allotment to his father, he said that as so much time had elapsed since his father and the other person had applied, the other person was unlikely to question who was first and, in any event, it would not be difficult to retype the list. The Councillor suggested that in return for this favour he would encourage the Council to look favourably on the charity suggested by the Clerk when it came time to decide where to allocate funds raised at a fun day the following month. I would regard this as indicative of a breach of paragraph 4(d) of the Code.

### Example 14

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

## Disclosing confidential information

See paragraph 5(a)



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

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

2.26 The Information Commissioner has issued helpful guidance on the Freedom of Information Act and Data Protection Act which is available on the Commissioner's website at [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113. As a community councillor you may have sight of information of a confidential or sensitive nature, such as personal or commercially sensitive information. You must also be mindful that, as a councillor, you hold a position of trust and you may find that members of the public will provide you with information that should be regarded as confidential. You should always confirm (where possible obtain an agreement in writing) that you have the person's permission to disclose such information before doing so. As a general rule, you should treat items discussed in the confidential sections of meetings ('exempt' items) as confidential. Similarly, legal advice is almost always covered by legal privilege and should not be disclosed.

### Example 15

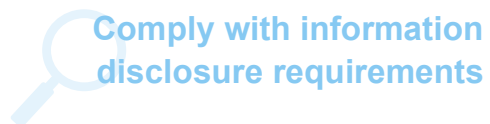
Community Councillor S received an email from another councillor regarding the employment of the caretaker, which was marked 'confidential'. Councillor S disclosed the email to the caretaker's wife and information in the email was subsequently used against the Council in a tribunal hearing relating to the caretaker's employment. I concluded that this was indicative of a breach of paragraph 5(a) of the Code by Councillor S.

### Example 16

A member of a County Borough Council circulated information about an officer's medical condition to other members of the Council, a local headteacher and another person with whom he was acquainted. In the judgment of the Adjudication Panel, the member had disclosed information about the officer's health which should reasonably be regarded as being of a confidential nature and without the consent of the officer, in breach of paragraph 5(a).

2.27 I expect information provided to a member during the course of an investigation by my office to be treated in the strictest of confidence and it should not be disclosed to anyone other than the member's legal or other adviser. If the information is disclosed to other persons, I may consider this to be a breach of this paragraph of the Code. In addition, members should not discuss the complaint with any of the witnesses, whether directly or indirectly, as such contact may also be construed to be a breach of the Code.

### Preventing access to information See paragraph 5(b)



2.28 **You must not prevent any person from accessing information which they are entitled to by law.** This includes information under the Freedom of Information Act 2000 or those copies of minutes, agendas, reports and other documents of your Council which they have a right to access. To find out more about what types of information the public can access, contact the Information Commissioner's Office by visiting [www.ico.org.uk](http://www.ico.org.uk) or by calling 0303 123 1113; or for specific queries, you should ask your Clerk.

2.29 Any information that you produce in your official capacity is liable to be subject to the disclosure requirements of the Freedom of Information Act, and your Council may be required to release it in response to a request. If you do not provide the information to the Clerk or other person dealing with the information request when asked, you will be in breach of the Code.

2.30 Your Council needs to decide whether to disclose information or whether it may be covered by an exemption under the Freedom of Information Act. Even if you believe that information you hold is exempt, you must provide it to the person dealing with the information request to allow the Council to reach a decision. As well as being a breach of the Code, it is a criminal offence if information is destroyed after a Freedom of Information Act request has been received.

### Example 17

The Leader of a County Council refused to give the Council's Information Officer a letter he had written to the then Wales Audit Office, on behalf of the Council's Executive. As a result, the Council could not respond appropriately to a Freedom of Information Act request which resulted in a complaint being made to the Information Commissioner's Office. The member continued to refuse to disclose the letter despite having received clear and unequivocal advice from the Information Officer. His refusal led to an adverse finding from the Information Commissioner's Office. The Adjudication Panel found that the member had breached paragraphs 5(b) and 6(1)(a) (disrepute) in respect of this matter and other related matters.

### Disrepute See paragraph 6(1)(a)

 Any conduct unbecoming of a member can constitute disrepute

2.31 **You must not behave in a way which could reasonably be regarded as bringing your office or authority into disrepute at any time.** As a member, your actions and behaviour are subject to greater scrutiny than those of ordinary members of the public. You should be aware that your actions in both your public and private life might have an adverse impact on the public perception of your office as a member, or your Council as a whole.

2.32 When considering whether a member's conduct is indicative of bringing their office or their authority into disrepute, I will consider their actions from the viewpoint of a reasonable member of the public. It is likely that the actions of those members in more senior positions, such as the Chair of a Council, will attract higher public expectations and greater scrutiny than ordinary members. It is more likely, therefore, that inappropriate behaviour

by such members will damage public confidence and be seen as bringing both their office and their Council into disrepute. This does not mean that inappropriate behaviour by ordinary members can never bring their council into disrepute.

2.33 Dishonest and deceitful behaviour will bring your Council into disrepute, as may conduct which results in a criminal conviction, especially if it involves dishonest, threatening or violent behaviour, even if the behaviour happens in your private life.

2.34 Whilst you have the right to freedom of expression, making unfair or inaccurate criticism of your Council in a public arena might be regarded as bringing your Council into disrepute. Similarly, inappropriate emails to constituents or careless or irresponsible use of social media might bring the office of member into disrepute, bearing in mind the community leadership role of members. Cases considered by the Adjudication Panel have shown that such behaviour will often be viewed as a serious breach of the Code.

### **Example 18**

A Community Councillor attempted to obtain a discount on a private purchase from a shop by saying it was being bought on behalf of the Community Council. When his request for a discount was refused, he was abusive to the proprietor and two members of her staff and made threats against the business. The Adjudication Panel found that the member attempted to gain an improper advantage for himself, by misrepresenting the purchase as being on behalf of the Council, and his abusive behaviour towards the staff had brought the office of member into disrepute.

### **Example 19**

A member of a County Borough Council who regularly wrote an article for a local monthly publication referred in his article to a recent road traffic accident in which a 10 year-old boy was injured. The complainant was the mother of the boy who was with the injured child. After the article was published, she telephoned the Councillor who she said was abusive towards her during the call. In a subsequent email exchange, the Councillor told her that she had “[failed] to take ANY responsibility for

allowing your 10yr old child out alone”, that her “ill-educated in the highway code son” was to blame and said “don’t you dare try and shift your inadequacies as a parent upon me”.

The Adjudication Panel found the member had failed to show respect and consideration to the complainant through the use of inappropriate language and by making unfounded and serious allegations based his limited knowledge of the facts, in breach of paragraph 4(b). Through its aggressive tone, threatening nature and serious allegations contained in the email, the member has also brought the office of member into disrepute, in breach of paragraph 6(1)(a).

### Example 20

Whilst acting in a private capacity, a member of a County Borough Council received a criminal conviction for common assault as a consequence of the unsolicited touching of the leg of a female, which caused her distress. The Adjudication Panel heard that the member accepted his behaviour was unacceptable and had pleaded guilty to the offence in the Courts. The Panel found that the conviction and negative publicity that surrounded the case had brought the member’s office into disrepute, in breach of paragraph 6(1)(a) of the Code.

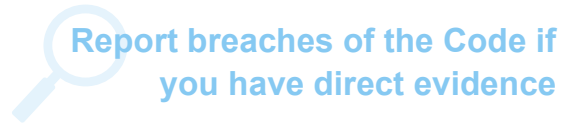
### Reporting criminal behaviour See paragraph 6(1)(b)



**2.35 The Code requires you to report any conduct by another member, an officer, or anyone who works on behalf of your Council (e.g. a contractor) which you reasonably believe involves or may involve criminal behaviour.** Such matters should be reported through your Council’s confidential reporting procedure, or direct to the proper statutory authority. As with alleged breaches of the Code (see below), you should not make vexatious, malicious or frivolous allegations, which would themselves be capable of being a breach, by you, of paragraph 6(1)(d) of the Code. If in doubt, consult your Council’s Clerk. The principal council’s Monitoring Officer may also be able to provide advice.

## Reporting breaches of the Code

See paragraph 6(1)(c)



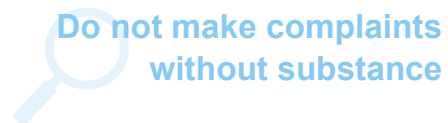
- 2.36 If you reasonably believe that a breach of the Code has occurred, you must report it to the Monitoring Officer of the principal council.** There is no express requirement to report the matter to me, although allegations about serious breaches of the Code can and should be reported to my office.
- 2.37 In order to have a reasonable belief that a breach has occurred, you will need to have direct evidence (see below) which supports this. If you are in doubt as to whether a breach has occurred, you should seek the advice of your Clerk or consult the Monitoring Officer as soon as possible.
- 2.38 The Clerk or Monitoring Officer will be able to advise you whether the nature of the alleged breach warrants the matter being referred to me. Where the breach is a very minor or a technical one, or where there is no clear evidence that a breach occurred, your Clerk or Monitoring Officer may advise you of the likely threshold I will set in deciding whether an investigation is appropriate. In the most serious of cases the Clerk or Monitoring Officer may, as an exception, decide to refer matters to me directly or on your behalf. In most other cases, you will be advised to do so yourself.
- 2.39 If your Council has adopted the Model Local Resolution Protocol for low-level complaints, your Clerk or the Monitoring Officer may suggest that the matter would be more appropriately dealt with through that process. The decision as to whether to investigate a breach rests with me. The balance of any doubt should always favour reporting. It is helpful if you specify which aspect of the Code you believe has been breached.
- 2.40 In determining whether to investigate a complaint of a breach, I will use the two-stage test which I have outlined in the Introduction to this guidance. You should ensure that you provide any evidence you have available when you make a complaint including minutes of meetings, correspondence, contemporaneous notes or emails. If there are other individuals who have witnessed the alleged breach, you should let me know who they are. This latter point is especially important because, if I only have one person's word



against another's, I may not be able to conclude with sufficient certainty that there is enough evidence to warrant pursuing the matter.

2.41 To report a potential breach, you can contact my office by phone at 0300 790 0203, by email to [ask@ombudsman.wales](mailto:ask@ombudsman.wales) or via the website at [www.ombudsman.wales](http://www.ombudsman.wales). A special leaflet on making complaints about alleged breaches of the Code is available on request or on the website.

### Vexatious complaints See paragraph 6(1)(d)



**2.42 You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, your Council.**

2.43 You must not make complaints against other members, your Council's officers or people working on behalf of your Council which are not founded in fact and which are motivated by malice (a desire to do them harm) or by political rivalry. Unfortunately, there have been instances where members have sought to bring complaints about rivals which are designed to disadvantage them, sometimes in the run-up to elections, and where the evidence of any breach is weak or non-existent. I consider that in the first instance such conduct should be considered under the Council's local resolution process, if there is one in place.

2.44 Where specific details of such complaints are passed to local press and media, this may prejudice an investigation and may also be a breach of the Code. You must report well-founded alleged breaches to the Monitoring Officer of the principal council - not to your local newspaper or radio station. The press will properly cover the business of any subsequent hearings and their outcomes, and members making allegations should not generate publicity in advance of these.

2.45 The Code should not be used by members to pursue their political or private differences. You should also avoid making complaints which have little or no substance (frivolous complaints) which are designed mainly to annoy the person complained about.



### Example 21

A member of a County Borough Council alleged that the Leader of the Council had offered to provide another councillor and his group of members with office facilities, if that other councillor supported the Leader's preferred candidate for the post of Chief Executive. The Adjudication Panel found that the allegation was without foundation and was designed to cause damage to the Leader of the Council. As such, it was both a vexatious and malicious complaint, contrary to paragraph 6(1)(d) of the Code. The Panel also concluded that the surrounding publicity had brought the Council into disrepute in breach of paragraph 6(1)(a).

2.46 This aspect of the Code has been a particular problem within community and town councils. In the past, it has been necessary for my predecessor to correspond with the Clerk of a council in relation to their mutual concerns about the number of complaints received in respect of its members. As previously stated, I too have had concerns about the number of low-level, tit-for-tat complaints that are still being received from community councillors in particular.

2.47 Although these complaints appear to be generated by a small number of members, they can create a negative impression of those members and their councils and, more generally, can harm public confidence in our elected members. At the extreme, they can also have such an adverse impact on relations within the Council as whole as to render it incapable of conducting its business effectively. Where it becomes apparent that repeated member against member complaints are being made to my office, I would urge those councils to reflect on the culture which has resulted in these complaints and consider how this behaviour might be changed to avoid such complaints.

2.48 Where I find evidence to suggest that a complaint has been made to my office which is not founded in fact and has been motivated by malice or political rivalry, I will consider this to be a serious matter and I may investigate whether you have failed to comply with the Code in submitting the complaint. **Making vexatious, malicious or frivolous complaints is not only a breach of this paragraph, but may also be contrary to your**

**other obligations under the Code, such as the requirement not to bring your position as councillor into disrepute (paragraph 6(1)(a)) or not to use your position for an improper purpose (paragraph 7(a)).**

2.49 I appreciate that it can be frustrating if a member of the public makes repeated complaints against you which you consider to be vexatious or frivolous in nature. They are not subject to the Code and I am required to consider each complaint on its own merit. However, it is unlikely that such complaints would pass my two-stage test and be accepted for investigation.

### Co-operating with investigations See paragraph 6(2)



2.50 **You must co-operate with an investigation when it is being conducted by me or by the Monitoring Officer of the principal council for the area using our statutory powers.** Not to do so is itself a breach of the Code. This means that you should reply promptly to all correspondence and telephone calls, make yourself available for interview if required and make available copies of any requested documents, including electronic communications such as emails and texts. It would be helpful if you could identify any concerns that you may have during the course of the investigation so that these can be promptly resolved. My office and the Monitoring Officer will make reasonable allowances for urgent pressures you face and arrangements previously made, for example, for holidays. However, they will expect you to give priority to their investigations, to avoid matters being needlessly drawn out. The requirement to co-operate with an investigation applies whether you are a witness or the subject of the investigation.

2.51 I am aware of instances where members accused of breaches of the Code have sought to put pressure on the individuals making the complaint or on other witnesses. I regard such behaviour as entirely unacceptable. You must not intimidate or attempt to intimidate any person who is, or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a failure to comply with the Code. In one case I investigated, the Adjudication Panel found that the member's actions in threatening the complainant

could be described as akin to blackmail. As such, the Panel considered this to be more serious than the complaint which had led to my investigation in the first place.

2.52 However much you may be concerned about allegations that you or a fellow councillor failed to comply with the Code, it is always wrong to bully, intimidate or attempt to intimidate any person involved in the investigation or hearing. Even though you may not have breached the Code, you will have your say during any independent investigation or hearing, and you should let these processes follow their natural course.

2.53 If you intimidate a witness in an investigation about your conduct you may, for example, find yourself subject to another complaint that you have breached paragraph 4(c) of the Code with regard to bullying or harassment, or paragraph 6(1)(a) in respect of bringing the office of member into disrepute.

### **Example 22**

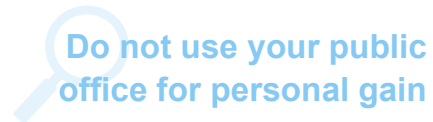
My office investigated a number of separate serious allegations that a member of a Community Council had failed to comply with his Council's Code of Conduct, following which three reports were referred to the Adjudication Panel for Wales. During the course of the investigation the member refused to engage properly with the process, was obstructive in that he refused to accept the delivery of papers, and he made a number of threats, including legal action, against the investigating officer and other members of the Council. The Adjudication Panel found that the member's failure to provide a proper and substantive response to requests made by my office during the investigation was a breach of paragraph 6(2) of the Code.

### **Example 23**

During the course of an investigation into alleged inappropriate messages posted on Facebook by a Community Councillor, the member concerned failed to provide information to my office about historic changes made to the privacy settings on his account. He claimed to not know how to do so, and did not respond when sent advice by my office on how to access his

activity log. The Adjudication Panel found the member had been less than candid about his ability to check any change of settings on his account, when he was clearly an experienced user of Facebook. The Panel found the Councillor had deliberately avoided providing information and full and frank responses to the reasonable requests of my office, in breach of paragraph 6(2) of the Code.

### Using your position improperly See paragraph 7(a)



- 2.54 You must not use, or attempt to use, your position as a member improperly to the advantage or disadvantage of yourself or any other person.<sup>9</sup> This paragraph applies at all times and not just when you are carrying out your duties as a member. You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member. This also applies if you use your office to improve your wellbeing at the expense of others.**
- 2.55 Members who own land, or whose close personal associates own land, need to be particularly cautious where planning matters are concerned. If you are in any doubt, you should take advice. This applies equally to members of community and town councils when your Council is consulted on planning matters. Similarly, while it is reasonable to expect members to help constituents apply to the Council, for example, for housing, it is quite inappropriate to seek to influence the decision to be taken by the officers.
- 2.56 The provisions of the Bribery Act 2010 apply to members carrying out their public functions. Should a member be convicted of a criminal offence under this Act, then it is likely that they will also have used their position improperly (in breach of paragraph 7(a)) and be likely to have brought the office of member or their authority into disrepute in breach of paragraph 6(1)(a). If any complaint which is made to me concerns conduct which may amount to a criminal offence then I am likely to refer the matter to the police.

<sup>9</sup> In legislation, the use of 'person' includes a body of persons corporate or unincorporated – see Schedule 1, Interpretation Act 1978; and Schedule 1, Legislation (Wales) Act 2019 (for Welsh legislation made on or after 1 January 2020).

### Example 24

A Councillor was a 'joint co-ordinator' of a community group. The Councillor did not notify the Council of her position in this group. She took part in the consideration of, and voted on, the decision to negotiate a new lease in respect of a workshop used by the community group. A Standards Committee found that she had used her position on the Council improperly as the decision on which she voted benefited a group in which she clearly had an interest which she had not disclosed to the Council. She was found in breach of paragraph 7(a) of the Code.

### Example 25

A member of a National Park Authority being investigated by my office for alleged inappropriate behaviour towards another member, spoke with the Chair of the Authority in an attempt to have the matter dealt with through a roundtable discussion of the parties involved. The member threatened to disclose information publicly about the complainant if the complaint to my office was pursued and went against him. The Adjudication Panel found that this amounted to an attempt by the member to use his position improperly in order to avoid a potential disadvantage, as well as breaches of paragraphs 4(b) (respect and consideration) and 6(1)(a) (disrepute) of the Code.

### Example 26

A member of a Town Council wrote to the Welsh Government indicating that an application for a loan in respect of a 'Community Hub' project, supported by the Council, should not go ahead as the matter was subject to further discussion. The correspondence was signed by the member using the title Deputy Mayor of the Council. As a consequence, the Welsh Government made further enquiries of the Council and required it to submit a further loan application, which resulted in further work and expense for the Council.

During the course of my investigation the member claimed the correspondence was sent in a personal capacity. It was an accepted fact that the Community Hub would include facilities which would be in direct competition with the business interests of the member. In my view, the Welsh Government was unlikely to have acted upon the member's communication had it not been under the impression that the author was representing the Council.

A Standards Committee considered that the communication was designed to have an impact on the project. Whereas some of the motivation may have been to protect the public interest, the Committee considered the member had gone about it in an inappropriate manner which gave the impression that he was acting in his own business interests. The Committee concluded that the member had attempted to use his position improperly to gain an advantage in breach of paragraph 7(a) of the Code.

### Using the Council's resources See sub-paragraphs 7(b)(i) – (iv)

 Only use resources for lawful and permitted purposes

**2.57 You must only use or authorise the use of the resources of the Council in accordance with its requirements and the law. These sub-paragraphs also apply at all times.** If your Council provides you with access to resources (for example telephone, computer and other IT facilities), you must only use these resources for carrying out your Council business and any other activity which your Council has authorised you to use them for.

**2.58** You must be familiar with the rules made by your Council applying to the use of these resources. Failure to comply with your Council's rules is likely to amount to a breach of the Code. If you authorise someone (for example a member of your family) to use your Council's resources, you must take care to ensure that this is allowed by your Council's rules.

### Using resources for proper purposes only See sub-paragraphs 7(b)(v) and (vi)

 Do not use resources for private or political purposes

**2.59 You must make sure you use the Council's resources for proper purposes only. These sub-paragraphs apply at all times.** It is not appropriate to use, or authorise others to use, the resources for private or political purposes, including party political purposes. When using the Council's resources, you must have regard, if applicable, to any guidance issued by your Council, for example, your Council's Information Security Policy.

## Example 27

A member of a County Council was found in breach of the Code for making improper use of his council-owned computer equipment for private purposes by downloading adult pornographic images and sending a number of letters to a local newspaper, which he falsely represented as being from members of the public. The Adjudication Panel found that the member had misused the Council equipment in breach of the Code and had brought the office of member into disrepute.

## Reaching decisions objectively See paragraph 8(a)



**2.60 When taking part in meetings of your Council, or when arriving at decisions relating to the Council's business, you must do so with an open mind and consider the issues objectively.** During the decision-making process, you must act fairly and take proper account of the public interest.

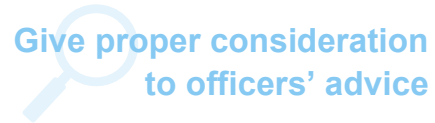
2.61 Most decisions taken by a community or town council relate to local matters and funding of local projects. Although the amounts of money being spent are smaller than at county level, all decisions must be taken on the basis of the facts in front of you. You must not have made your mind up in advance to such an extent that you are entirely unprepared to consider all of the evidence and advice you receive. Having a completely closed mind is known as **pre-determination**. You are entitled to hold a preliminary view about a particular matter in advance of a meeting (**pre-disposition**) as long as you keep an open mind and are prepared to consider the merits of all the arguments and points made about the matter under consideration before reaching your decision.

2.62 **Pre-determination**, on the other hand, would be where you have clearly decided on a course of action in advance of a meeting and are totally unwilling to consider the evidence and arguments presented on that matter during the meeting. Pre-determination could not only invalidate the decision, it would also amount to a breach of the Code.



## Considering advice provided to you and giving reasons

See paragraph 8(b)



**2.63 You must give reasons for all decisions in accordance with any legal requirements and any additional requirements imposed by your Council.** You must have regard to all of the advice you receive from your Clerk or other officers of the Council. The Clerk is usually also the 'Proper Officer'<sup>10</sup> and it is part of their role to research the policy, guidelines and legislation relevant to advice given when taking decisions.

2.64 It is always helpful, if you can, to seek and obtain advice as early as possible. If you can, ask for advice in good time before a meeting, rather than at the meeting or immediately before it starts. Make sure you give the Clerk all of the information they need to take into account when giving you advice.

2.65 If you seek advice, or advice is offered to you, for example, on whether you should register a personal interest, you should have regard to this advice before you make up your mind. Failure to do so may be a breach of the Code.

2.66 As a matter of good practice, where you disagree with the Clerk's recommendations in making a decision, you should give clear reasons for your decision. If you decide to vote against their advice, you should ensure that your reasons for doing so are recorded in the relevant minutes.

## Expenses

See paragraph 9(a)



**2.67 You need to follow the law and your Council's requirements in claiming expenses and allowances.** If you are in any doubt about your entitlements, or the proper way to claim, you should ask your Clerk for advice. You need to keep proper records of expenditure, supported by receipts where appropriate, so that you can properly evidence your claims. Even if a particular scheme does not require you to submit receipts, you are strongly advised to keep these so that you can prove how much you have actually spent on the items you are claiming for.

<sup>10</sup> The 'proper officer' is an officer appointed by the Council to exercise particular functions (ref: Section 270(3), Local Government Act 1972).



## Gifts and hospitality

See paragraph 9(b)



**2.68 It is important that you do not accept any gifts or hospitality for yourself, or on behalf of others, which would place you under obligation or appear to do so.** Accepting such gifts or hospitality could be regarded as compromising your objectivity when you make decisions or carry out the work of your Council. This is also true of any services or gifts in kind. This does not prevent you from attending official events such as a civic reception or working lunch where these are authorised by your Council. (See also the section of this guidance on registering gifts and hospitality under paragraph 17 of the Code).

## 3 Personal and prejudicial interests

3.1 The elements of the Code which cover personal and prejudicial interests give rise to many questions from members. They are designed to safeguard the principles of selflessness and objectivity. They are intended to give members of the public confidence that decisions are being taken in their best interests, and not in the best interests of members of authorities or their close personal associates.

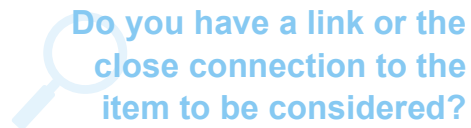
3.2 Personal interests relate to issues where you or a close personal associate may have some link to a matter under discussion. These interests become prejudicial where an informed independent observer could reasonably conclude that the interest is likely to influence your vote, or your decision.

3.3 In my experience, it is the distinction between personal and prejudicial interests, and what action a member should take depending on the nature of their interest, that causes the most difficulty for members. The paragraphs below are designed to offer guidance in this area. I would strongly recommend that if you are in any doubt about whether you have a personal or prejudicial interest, and, if so, what you need to do, you should consult your Clerk, who may be able to offer advice. The principal council's Monitoring Officer may be able to assist with more complex matters. However, their resources are limited and advice should be

sought in good time prior to a meeting at which the related business is to be considered. Ultimately, however, the decision on what course of action should be taken remains with you.

- 3.4 To provide some further assistance, I have attached a flowchart to this guidance at Appendix 2, based on a document prepared by Rhondda Cynon Taf County Borough Council, which is designed to take you through the questions that you should ask when deciding whether you have an interest. It is for illustration purposes only and is not definitive.
- 3.5 Guidance on registering interests is at Section 4.

### Personal Interests See paragraph 10



- 3.6 **While you are carrying out your duties, you must consider whether you have a personal interest and, if so, whether you need to disclose it.** Most members know that you need to disclose personal interests at meetings, but as you will read below, there are other occasions, such as when speaking to the Clerk about the matter concerned, when you may also need to do so.
- 3.7 Listed below are some questions that you should ask yourself when deciding if you have an interest:

#### **Do I have a personal interest?**

- 3.8 You have a personal interest in any business of your Council, including when making a decision, where it relates to or is likely to affect:
1. your job or your business
  2. your employer, or any firm in which you are a partner or paid director
  3. any person who has paid towards the cost of your election or your expenses as a member

4. any company in which you hold shares with a nominal value of more than £25,000 or where your holding is more than 1% of the total issued share capital, which has premises or land in your Council's area
5. any contract that your Council makes with a firm in which you are a partner, paid director or hold shares in (as described in 4, above)
6. any land in which you have an interest and which is in your Council's area (this is especially important in all planning matters including strategic plans)
7. any land let by your Council to a firm in which you're a partner, paid director or a body (as set out in 4, above)
8. any body to which you've been elected, appointed or nominated by your Council
9. any of the following in which you have membership or hold a position of general control or management:
  - public authority or body exercising functions of a public nature
  - company, industrial and provident society, charity or body directed to charitable purposes
  - body whose main role is influencing public opinion or policy
  - trade union or professional association
  - private club, society or association operating in your Council's area
10. any land in your Council's area which you have a license to occupy for at least 28 days
11. Any person with whom you have a close personal association.

3.9 It is always safer to declare an interest. However, if in doubt, consult your Clerk or the Monitoring Officer of the principal council for the area, who may be able to offer advice subject to resource constraints.

### Matters affecting your well-being or financial position



Will your well-being or that of a close associate be effected?

3.10 If a decision might be seen as affecting your well-being or financial position or the well-being or financial position of any person who lives with you or with whom you have a **close personal association** to a greater extent than other people in your ward, or the Council's area if it does not have multiple wards, you have a personal interest.

3.11 Examples of decisions of this kind include obvious issues like contracts being awarded to your partner's company, but also issues about the location of developments, where it might make a big difference to where you or your close personal associates live. Examples have included the location of playgrounds, where elected members have opposed them near their houses because of issues about noise.

### What is “a body exercising functions of a public nature”?



Does the body carry out a public service?

3.12 The phrase “a body exercising functions of a public nature” has been subject to broad interpretation by the courts for a variety of different purposes. Although it is not possible to produce a definitive list of such bodies, here are some of the criteria to consider when deciding whether or not a body meets that definition:

- Does that body carry out a public service?
- Is the function exercised under legislation or according to some statutory power?
- Can the body be judicially reviewed?

3.13 When conducting community or town council business, it is likely that you will be acting on a body which is exercising functions of a public nature. You may also be doing this if you have been appointed to act on behalf of the Council on a community project or interest group.


### What does “affecting well-being or financial position” mean?



Is your quality of life affected?

3.14 The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life, either positively or negatively, is likely to affect your well-being. A personal interest can affect you or your close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, you need to declare a personal interest in both situations.

### Who is a close personal associate?

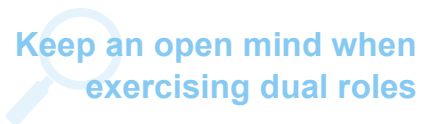


Close personal associates include friends, relatives, business associates and those with whom you have been in dispute

3.15 Close personal associates include people such as close friends, colleagues with whom you have particularly strong connections, business associates and close relatives. It does not include casual acquaintances, distant relatives or people you simply come in contact with through your role as a member or your work in the local community. It also does not include a person, such as a close relative, with whom you have become estranged and it would be unreasonable for you to have knowledge of their business or other interests, or the potential impact on their well-being of a matter considered by your authority.

3.16 Close personal associates can also include someone with whom you have been in dispute, or whom you may be regarded as having an interest in disadvantaging. For example, being a member of the same golf club as another person would not of itself constitute a close personal association, but having that person as a weekly golf partner might well do. If you are in doubt, you should ask your Clerk or the Monitoring Officer of the principal council.

### “Twin hatted” members



- 3.17 If you are a member of both a community or town council and a county or county borough council, you are not prevented from discussing the same matters at both. You may, for example, take part in a discussion about a planning application about which your Community or Town Council has been consulted and still go on to participate in a decision about the application if you sit on the Planning Committee of your County Council.
- 3.18 If you do so, you would be well advised to state at the Community or Town Council meeting that you would be looking at the matter afresh when you consider it at the Planning Committee meeting, and that you would take into account all of the information and advice provided to you. At the Planning Committee, you should make it clear that you are not bound by the views of the Community or Town Council. The advice about objective decision making in respect of paragraph 8 of the Code is also relevant here.
- 3.19 Obviously, if the planning application was one submitted by the Community or Town Council, then you would have both a personal and a prejudicial interest, and you would be required to declare it and withdraw in line with the guidance on “what to do if you have a prejudicial interest” below.

### Example 28

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered the Clerk’s remuneration package. The member and the Clerk were in a relationship and engaged to be married at the time. The Adjudication Panel found that the member should have declared a personal interest in the item of business by virtue of his close personal association with the Clerk. It considered also that the nature of the member’s relationship with the Clerk was one that gave rise to a prejudicial interest, as it concerned a significant benefit for the future spouse. The Adjudication Panel considered that the interest was one that would affect public perception of the members’ ability to make a decision in the public interest. The Adjudication Panel reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen as doing so.

## What if I am not aware of my personal interest?

Disclose what you know

3.20 Your obligation to disclose a personal interest to a meeting only applies when you are aware of **or reasonably ought to be aware** of the existence of the personal interest. Clearly, you cannot be expected to declare something of which you are unaware. It would be impractical to expect you to research into the employment, business interests and other activities of all your close associates and relatives. However, you should not ignore the existence of interests which, from the point of view of a reasonable and objective observer, you should have been aware.

## What to do when you have a personal interest

See paragraph 11

Once disclosed you can stay and participate if your interest is not prejudicial

- 3.21 When you have a personal interest in any business of your Council, you **must** disclose the existence and nature of the interest before participating (unless it is also a prejudicial interest) in any business to which it relates. How you do this will depend on the circumstances in which the business is being transacted.
- 3.22 If you are attending a **meeting**,<sup>11</sup> you must disclose the interest orally to that meeting before or at the commencement of the consideration of the relevant business at the meeting, or at the point the interest becomes apparent. If this is the first time you have disclosed the interest during your current term of office, you must confirm it in writing before or immediately after the close of the meeting, in accordance with arrangements set out by your Council's Clerk. As a minimum, you need to say in writing what the interest is, what business considered by the meeting it relates to and you need to sign it.
- 3.23 If you are making **written representations** (including by email, text etc) to a member or officer of your Council regarding any matter in which you have a personal interest, you should include details of the interest in that correspondence.

<sup>11</sup> The definition of 'meeting' in paragraph 1(1) of the Code is very broad and includes any meeting where members or officers are present, not just formal meetings of the council. For example, it can include an informal meeting of a member and officer.

- 3.24 Similarly, if you are making **oral representations** (whether in person, by telephone or video-conference etc) you should disclose the interest at the commencement of those representations, or when the interest becomes apparent. I would generally expect officers to make a record of any conversation in which a member has disclosed an interest and attach it to the appropriate file. However, it remains your responsibility under the Code (paragraph 11(2)(b)) to confirm the oral representations and details of the personal interest disclosed by you in writing within 14 days.
- 3.25 **Key point:** You must disclose the existence and nature of a personal interest in the way set out above on every occasion before you participate in the business to which it relates, regardless of whether you have previously registered the interest. This ensures that everyone present, including members of the public or other observers are aware of your interest.
- 3.26 If the Monitoring Officer of the principal council for the area has agreed that the information about your personal interest is **sensitive information**, then you should disclose the existence of a personal interest (but not its nature), and confirm that the Monitoring Officer has agreed that the information about it is sensitive. More information about this is included in the separate section on paragraph 16 of the Code below.
- 3.27 If you declare a personal interest, you can remain in the meeting, speak and vote on the matter, **unless your personal interest is also a prejudicial interest**. What constitutes a prejudicial interest is outlined in the following section.

### Example 29

I investigated a complaint that a member of a Town Council attempted to use his position to derail a 'Community Hub' project because, within the Hub, there would be a social club serving food and drink and this would affect the member's business – a nearby pub/restaurant. The member had also previously been in a business relationship with one of the parties to the Community Hub project, which had ended acrimoniously. Historic minutes of the Council's meetings showed that the member had disclosed a personal interest in the project and had not attended meetings due this being a prejudicial interest. However, at a later meeting of the Council the



member did not disclose the existence and nature of his interest and did not withdraw from consideration of the project when it was discussed. This was despite the Clerk's advice that it was likely he had an interest in the matter under discussion. A Standards Committee found that the member had failed to disclose the existence and nature of a personal interest, in breach of paragraph 11(1) of the Code. The Committee further found that the interest was a prejudicial interest and, as the member had failed to withdraw from the meeting, he had also breached paragraph 14(1).

### Prejudicial Interests See paragraph 12

#### Do I have a prejudicial interest?

Do not be swayed by what you think – consider what a reasonable member of the public would think

3.28 Your personal interest will also be a prejudicial interest in a matter if a member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest. There are exemptions to this which are contained in paragraph 12(2) of the Code, although many of them are unlikely to apply to business undertaken by a community or town council.

#### What is so significant that it is likely to prejudice your judgement?

Would a reasonable member of the public consider you impartial?


3.29 If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a prejudicial interest. This is **an objective test**. You must decide not whether you would take the decision without prejudice, but whether you would be seen as doing so.

3.30 You must ask yourself whether **a member of the public**, if he or she knew all the relevant facts, would think that your personal interest was so significant that it would be likely to prejudice your judgement. In other words, the interest must be perceived as likely to harm or impair your ability to judge the public interest.

- 3.31 The mere existence of local knowledge, or connections within the local community, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.
- 3.32 Some general principles must be remembered when applying this test. You should clearly act in the public interest and not in the interests of any close personal associates. You are a custodian of the public purse and the public interest and your behaviour and decisions should reflect this responsibility.
- 3.33 You would have a prejudicial interest in the consideration and decision on whether to support a planning application proposal if a close personal associate of yours (for example your son or a good friend) lives next to the proposed site. This is because your close personal associate would be likely to be affected by the application to a greater extent than the majority of the inhabitants of your ward or Council area (if your Council does not have wards) and this gives you a personal interest in the issue. The close personal association means a reasonable member of the public might think that it would prejudice your view of the public interest when considering the planning application. **It does not matter whether it actually would or not.**
- 3.34 In other cases, where there has been a dispute between you and an individual who could be disadvantaged by a decision, an informed reasonable member of the public might conclude that you would be influenced by this when voting, whether this is the case or not.
- 3.35 **Community councillors do not have a prejudicial interest in decisions made by their Council in respect of grants, loans or other financial assistance to community groups or voluntary organisations where the value does not exceed £500.** Furthermore, community councillors who have been appointed to the community group or voluntary organisation concerned by their Community Council, for example, to the board of a community hall, will not have a prejudicial interest in decisions made by their Council in respect of any grants, loans or other financial

assistance in relation to that body. If, on the other hand, you are on such a board in another capacity and have not been appointed by your Council, then you will have a prejudicial interest.

### What to do when you have a prejudicial interest See paragraph 14

 You must declare your interest and withdraw from the room

- 3.36 If you have a prejudicial interest in any aspect your Council's business you must not take part in the consideration of that business, or make representations about it, except in the circumstances described below.
- 3.37 Nevertheless, even where you have a prejudicial interest, the Code supports your role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you.
- 3.38 **Key point:** If you have a **prejudicial interest** in a matter being discussed at a meeting, you must, having declared your personal interest in the matter, leave the room, chamber or place where the meeting is being held (including, for example, the location of a site meeting).
- 3.39 **This is unless you have obtained a dispensation from the relevant standards committee, or when members of the public are allowed to make representations, give evidence or answer questions about the matter**, by statutory right or otherwise. If that the latter is the case, you can also attend the meeting for that purpose, or you may submit written representations to the public meeting in accordance with any procedure adopted by your Council for this purpose. However, where you attend a meeting you must immediately leave the room or chamber once the period for considering representations has finished, and before any discussion on the item begins, even if members of the public are allowed to remain. You cannot, for example, remain in the public gallery to observe the discussion or vote on the matter as your very presence could influence the decision, or be perceived by a reasonable member of the public as doing so.

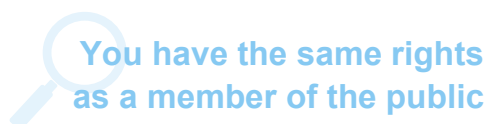
3.40 In addition, **you must not seek to influence a decision in which you have a prejudicial interest.** This rule is similar to your general obligation not to use your position as a member improperly to your or someone else's advantage or disadvantage. This means that, as well as leaving meetings where the item is discussed, you must also not write or make any oral representations about the matter, except in the circumstances above relating to representations by the public.

### Example 30

A member of a Community Council who owned a property next to a caravan and camping park attended a meeting of the Council when a planning application by the owner of the park was considered. The member had previously raised concerns with the relevant planning authority about a number of alleged breaches of planning permission by the owner of the park over a number of years. The member declared a personal interest and spoke at the Community Council meeting, setting out the background to the application, details of alleged previous breaches and commenting on the application itself; and voted against the application.

The Adjudication Panel found that the member's interest in the planning application was also a prejudicial interest and she should have withdrawn from the meeting. The close proximity of the member's home to the caravan and camping park, combined with the numerous concerns raised by the member regarding alleged breaches of planning controls, were facts that a member of the public could reasonably regard as so significant that they were likely to prejudice the member's judgement of the public interest. The Adjudication Panel found the member had sought to influence a decision regarding a matter in which she had a prejudicial interest in breach of paragraphs 14(1)(a), (c) and (e).

### Do I have a statutory right to speak to the meeting?




3.41 The Code does not provide you with a general right to speak to a meeting where you have a prejudicial interest. The Code aims to provide members with the same rights as ordinary members of the public to speak on certain

matters in meetings, despite having a prejudicial interest. These rights are usually governed by your Council's constitution, procedure rules or standing orders, and may be subject to conditions including time limits or the fact that representations can only be made in writing.


- 3.42 If an ordinary member of the public would be allowed to speak to a meeting about an item, you should be provided with the same opportunity. You will be able to make representations, answer questions or give evidence, even if you have a prejudicial interest in the item. The Code also provides the right to submit written representations to the public meeting in these circumstances. You may not, however, take part in the discussion or observe the vote.

### When must I leave the place where the meeting is held?

 You must withdraw at the earliest opportunity, unless permitted to make representations

- 3.43 You must withdraw from a meeting before, or as soon as it becomes apparent that, business in which you have a prejudicial interest is being considered.
- 3.44 If you are attending a meeting to make representations in the same way as an ordinary member of the public, you must leave immediately after the time for making representations, giving evidence or answering questions is finished, and before any debate starts.

### What does influencing a decision mean?

 You may influence other members simply by being present

- 3.45 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest, except where you are entitled to speak as described above. Your presence itself could be perceived to be capable of influencing the decision-making process. You should also take the advice of your Clerk before asking another member to speak about a matter for which you have a prejudicial interest. Dependent upon the circumstances, this could be viewed as seeking inappropriately to influence a decision in breach of the Code.

### Example 31

A member of a County Borough Council made representations on behalf of, and sought preferential treatment for, a close personal associate who was being threatened with removal as a local authority governor on a school governing body due to improper conduct. In so doing, the member did not avail himself of the normal complaints process, but undertook a course of conduct which involved making allegations against officers of the Council, disclosing confidential information and making a series of representations on behalf of his associate. In addition to breaches of other paragraphs of the Code, the Adjudication Panel found that the member had sought to influence decisions on a matter in which he had a prejudicial interest when he made written and oral representations to officers of the Council, in breach of paragraphs 14(1)(c) and (d).

### Example 32

A Standards Committee found that a member of a Town Council with a personal and prejudicial interest sought to influence a decision about a project being considered by the Council, when he participated in a discussion at a Council meeting, in breach of paragraphs 14(1)(a) and (c) of the Code. It also found that the member's participation in the discussion constituted oral representations in breach of paragraph 14(1)(d); and he had made written representations to the Clerk and the Welsh Government in an attempt to derail the project, in breach of paragraph 14(1)(e).

### What if the public are not allowed to speak to the meeting on the matter?

You can only make representations if the public can do so

- 3.46 If an ordinary member of the public is not allowed to speak on the matter, you cannot do so or submit written representations if you have a prejudicial interest. You must leave the place where the debate is being held and not seek to influence the debate in any way.
- 3.47 This may be the case, for example, where your Council is discussing a confidential matter in closed session or does not have procedure rules or standing orders in place that allow members of the public to speak at a

meeting of your Council. Like the public, you are not allowed to participate if you have a prejudicial interest. However, whereas the public may be allowed to sit in the public gallery to observe the meeting, **you must leave the room during the debate and vote.**

### Example 33

A member of a Community Council was found in breach of the Code for failing to declare a personal and prejudicial interest at a meeting which considered a planning application for a wind farm on land adjacent to a farm owned by her. The member had entered into a Lease of Rights agreement over her land to facilitate access to the proposed development. The member initially relied on the fact that this agreement contained a confidentiality clause to explain her actions. Nonetheless, the member participated in a secret ballot held in order to decide whether the Community Council would support or oppose the application.

Immediately prior to the hearing before the Adjudication Panel the member accepted that she had a personal interest in the item and later that it was prejudicial in nature. The Adjudication Panel found that the member had failed to comply with paragraphs 11(1) (disclosure of interest) and 14(1) (participation in relation to a disclosed interest) of the Code. It considered that she had allowed her personal interests to prevail and to keep those private conflicted with her duties and responsibilities as an elected member.

## Dispensations

**If I have a prejudicial interest, can I obtain a dispensation to allow me to take part in the meeting?**

**You could be granted a dispensation to speak and / or vote on a matter**

3.48 Standards committees have powers under regulations<sup>12</sup> made by the National Assembly for Wales (as it was known at the time) to grant dispensations to members with prejudicial interests, enabling them to speak and / or vote on a matter, in certain circumstances.

<sup>12</sup> Standards Committees (Grant of Dispensations) (Wales) Regulations 2001, SI 2001 No. 2279 (W.169)

3.49 You can apply in writing to the principal council's Standards Committee for a dispensation on one or more of the following grounds:

- at least 50 per cent of the Council or Committee members would be prevented from taking a full part in a meeting because of prejudicial interests
- the nature of your interest is such that your participation would not harm public confidence
- your interest is common to a significant proportion of the general public
- you have a particular role or expertise which would justify your participation
- the business relates to the finances or property of a voluntary organisation and you sit on its board or committee in your own right and you do not have any other interest, although in this instance, any dispensation will not let you vote on the matter
- the Committee believes that your participation would be in the interests of the people in your Council's area
- the Committee considers it otherwise appropriate in all the circumstances. When introducing this last category in 2016, the Welsh Government suggested, for example, that where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability, a dispensation under this category may enable the member to remain present in a meeting without participating in the business. This does not though limit the scope of this category of dispensation.

3.50 You can apply for a dispensation individually and, in certain circumstances, you can make joint applications where a number of members want to obtain a dispensation to speak or vote on the same matter. If the Standards Committee approves your application, it must grant the dispensation in writing and before the meeting is held. If you need a dispensation, you should apply for one as soon as is reasonably possible.



3.51 Only the Standards Committee can grant the dispensation and will do so at its discretion. The Standards Committee will need to balance the public interest in preventing members with prejudicial interests from taking part in decisions, against the public interest in decisions being taken by a reasonably representative group of members of the Council. If failure to grant a dispensation will result in a council or committee not achieving a quorum, this may well constitute grounds for granting a dispensation.

3.52 Where you hold a dispensation, you can also make written representations but you must provide details of the dispensation in any correspondence. If you make oral representations, whether in person or by phone, you must refer to the dispensation and confirm this in writing within 14 days.

## 4 Registration of Personal Interests

See paragraph 15

Key points

You must register a personal interest that you disclose for the first time at a meeting or when making representations

- 4.1 Community and town councils are required to maintain and publish electronically a record of its members' interests in a public register of interests. It must also be available for public inspection at reasonable hours. This record is maintained by the 'Proper Officer', usually your Clerk.
- 4.2 Unlike members of principal councils and other relevant authorities, as a community councillor you do not need to register pecuniary and other interests set out in paragraph 10(2)(a) of the Code upon taking up office. However, you may find that your Council has adopted this requirement as a matter of good practice.
- 4.3 You must, however, register any personal interest which you disclose for the first time under paragraph 11 of the Code, for example at a meeting or in written or oral representations, by giving written notice to your Council's Clerk. As indicated in the guidance on paragraph 11 of the Code, your Clerk will have arrangements in place for this. **Even when you have registered a personal interest, you must still disclose the existence and nature of the interest each and every time before you participate in any business to which it relates.**

- 4.4 Where you become aware of a change to a registered personal interest, you must register that change by providing written notice to your Clerk within 28 days.
- 4.5 The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest.
- 4.6 The register also protects you. You are responsible for deciding whether you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

### Sensitive information

See Paragraph 16

#### Key points



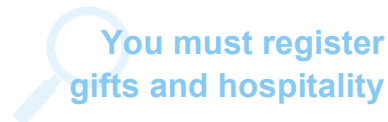
- 4.7 You may be exempt from having to disclose and register certain information in your Council's register of interests if the Monitoring Officer of the principal council for the area agrees that it is 'sensitive information'.
- 4.8 'Sensitive information' is information the disclose of which is likely to create a serious risk of violence or intimidation against you or someone who lives with you, should it become public knowledge. This may include, for example, details of your employment (such as certain scientific research or the Special Forces).
- 4.9 You should provide this information to the Monitoring Officer and explain your concerns regarding the disclosure of the sensitive information; including why it is likely to create a serious risk that you or a person who lives with you will be subjected to violence or intimidation. If the Monitoring Officer has agreed your personal interest in a matter under discussion at a

meeting is sensitive information, you will need to declare that you have a personal interest, but you will not have to give any details about the nature of that interest.

- 4.10 If, following a change of circumstances, the information excluded from the register of interests ceases to be sensitive information, you must notify your Council's Clerk within 28 days asking them to include the information in the register.

### Gifts and hospitality See Paragraph 17

#### Key points



- 4.11 You must notify your Clerk of any gifts or hospitality worth more than the amount specified by your Council that you receive in connection with your official duties as a member, and the source of the gift or hospitality, within 28 days.
- 4.12 Like other interests in your register of interests, you may have a personal interest in a matter under consideration if it is likely to affect a person who gave you a gift or hospitality that is registered. If that is the case, you must declare the existence and nature of the gift or hospitality, the person who gave it to you, how the business under consideration relates to that person, and then decide whether that interest is also a prejudicial interest. It is also good practice to provide a note of any offers of gifts or hospitality which you have declined and this may be a requirement of your Council's gifts and hospitality policy.

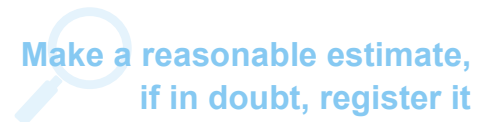
#### Is the gift or hospitality connected to my official duties as a member?



- 4.13 You should ask yourself, "would I have been given this if I was not on the Council?" If you are in doubt as to the motive behind a gift or hospitality, I recommend that you register it or speak to your Clerk.

4.14 You do not need to notify your Clerk of gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept (unless required to do so by your Council). However, you should always notify your Clerk of any gift or hospitality if it could be perceived as something given to you because of your position or if your Council requires you to do so.

### What if I do not know the value of a gift or hospitality?

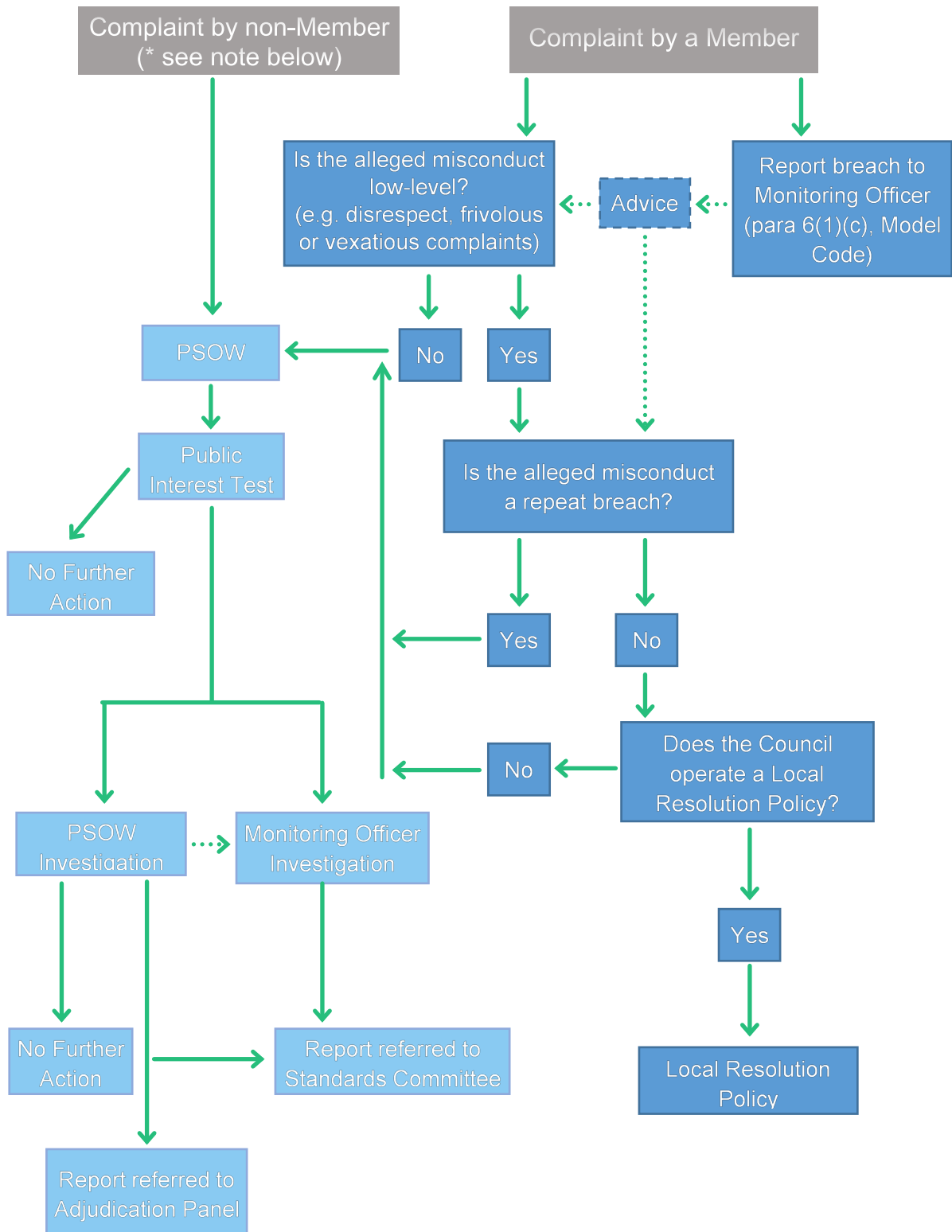


4.15 The general rule is, if in doubt as to the value of a gift or hospitality, you should notify your Clerk of it, as a matter of good practice and in accordance with the principles of openness and accountability in public life.

4.16 You may have to estimate how much a gift or hospitality is worth. Also, an accumulation of small gifts you receive from the same source over a short period that add up to the value specified by your Council or over should be registered.

4.17 The Code also refers to material benefit or advantage. The measure of this would be if an informed independent observer could conclude that you might be perceived to be better off as a consequence.

Code of Conduct Complaints Overview

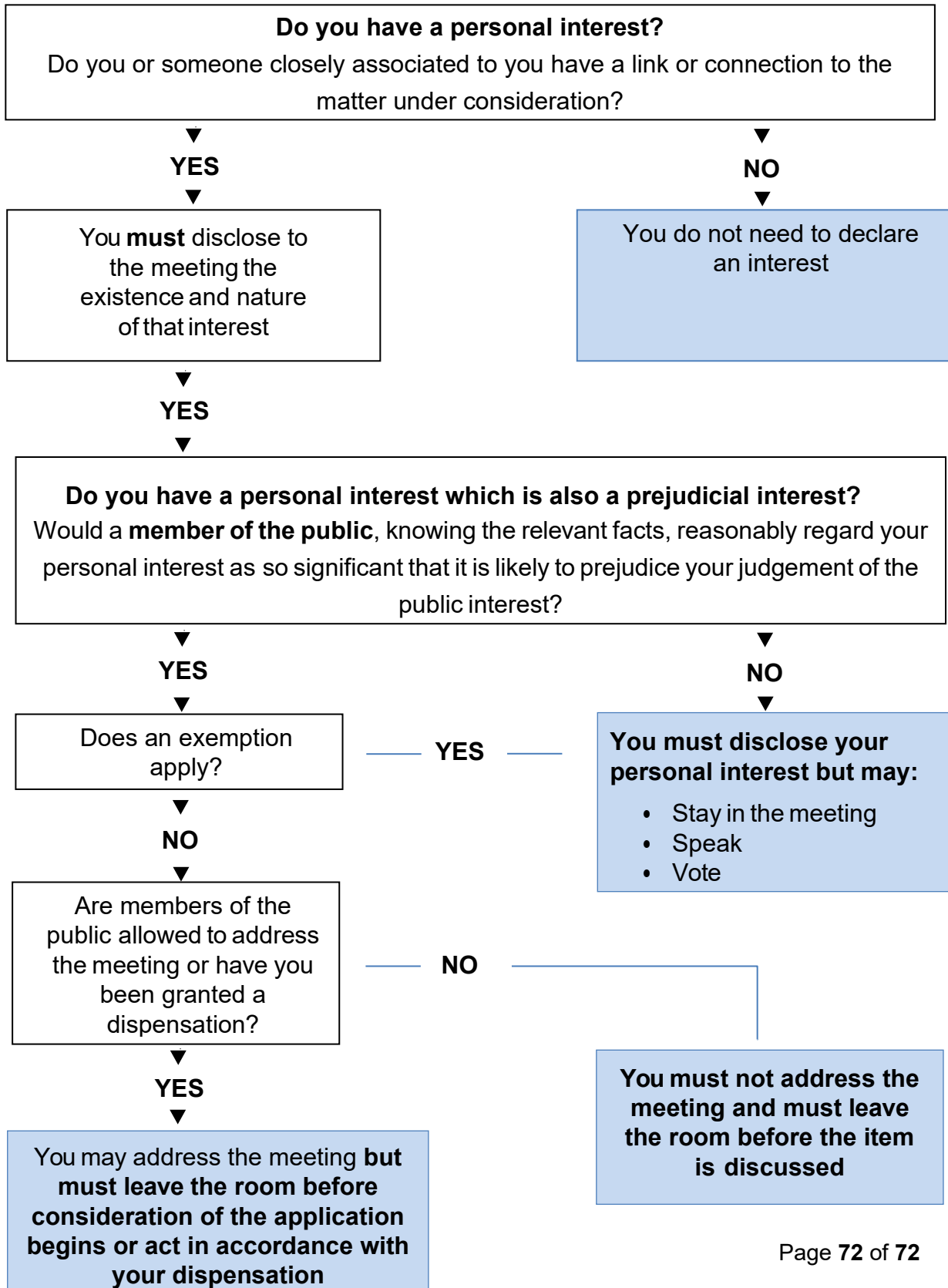


\* Note: an officer considering a complaint should take advice from the Council's Monitoring Officer / Clerk about the relevance of the Council's member / officer relations policy, or local resolution policy, before exercising their right to complain to the Public Services Ombudsman for Wales.

Appendix 2

Declaration of personal and prejudicial interests

Questions to ask yourself. If in doubt you should ask your Clerk or your Monitoring Officer.



## Contact us

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

Tel: 0300 790 0203  
Fax: 01656 641199  
Email: [ask@ombudsman.wales](mailto:ask@ombudsman.wales)  
Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

Further information about the service offered by the Public Services Ombudsman for Wales can also be found at <http://www.ombudsman.wales>

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## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

#### **NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS – DRAFT TERMS OF REFERENCE**

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

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

To update Members in respect of the National Forum for Standards Committee Chairs and consider the Forum's draft Terms of Reference.

##### **2. RECOMMENDATIONS**

- 2.1 It is recommended the Committee agrees the National Forum's draft Terms of Reference as set out in Appendix 1 to the report; and
- 2.2 That the proposed arrangements to support the National Forum are approved.

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

- 3.1 The Penn report commented on the variety of practice across Wales in how Standards Committees discharge their duties. At paragraph 4.4.1 the report says:

"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."

Richard Penn, the report author, then went on to comment positively upon the work of the forum for Chairs of Standards Committees in North and Mid Wales. Whilst acknowledging the place for local decision making, he recommends that a National Forum be established along the same lines - see paragraph 4.4.5

“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 ... would encourage consistency of approach and the adoption of best practice across Wales.”

### 3.2 The National Forum will

- a) give Standards Committee Chairs the chance to share and agree to co-ordinate practice;
- b) act as a sounding board for ideas;
- c) create a support network for Chairs and Committees.

3.3 It will not be a formal joint committee and so will not be able to make binding decisions on behalf of the constituent Councils. Instead, each Standards Committee will retain primacy. Where an idea for common action is proposed, each Committee will need to agree to act in accordance with whatever consensus has been established within the forum.

3.4 The body will consist of 28 constituent authorities at the outset. A new National Park Authority is planned and there are 4 newly formed Corporate Joint Committees which must have a Standards Committee, who may also wish to join. If constituent authorities sent any more than one representative, then the meetings would be unwieldy. Therefore, each authority will be allowed a single representative who may nominate a deputy to attend in their absence. Monitoring Officers will send one representative per region.

3.5 Previously the North and Mid Wales Forum would meet in person on a peripatetic basis being hosted by each authority in turn. For the time being meetings are likely to be held remotely (which would save travel) but if they resumed meeting in person then a central location would need to be found. Typically, this would mean meeting in or near Llandrindod Wells.

3.6 Draft Terms of Reference are attached at Appendix 1 which also include proposals for how the work of the forum will be supported.

## 4. **LEGAL IMPLICATIONS**

4.1 There are no legal implications arising from this report.

## 5. **CONSULTATION**

5.1 All Standards Committees have been consulted on this proposal previously.

**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 The secretariat support for the Forum is being provided by WLGA which will minimise impact on council resources. Further the working arrangements for the Forum have been designed to fit into existing structures such as meetings of LLG and so will need little extra resource

**8. CONCLUSION**

8.1 The Penn Report on the Review of the Ethical Regime in Wales (“the Penn Report”) commented on the variety of practice across Wales in how Standards Committees discharge their duties. It recommended that a National Forum for the Chairs of Standards Committees should be established modelled on the forum that exists in North and Mid Wales.

8.2 All authorities in Wales have agreed to create a National Forum to share practice. Draft terms of reference for the forum have been prepared by the Monitoring Officers Group of Lawyers in Local Government (“LLG”) for agreement.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**STANDARDS COMMITTEE**

**18 NOVEMBER 2022**

**REPORT OF MONITORING OFFICER**

**NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS – DRAFT TERMS OF  
REFERENCE**

**BACKGROUND PAPERS**

**Freestanding Matter**

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

## **National Standards Committee Forum** **Terms of Reference (2022)**

The purpose of the Forum is to share best practice and provide a forum for problem solving across the

- 1) 22 principal Councils
- 2) 3 Fire and Rescue Authorities
- 3) 3 National Park Authorities

in relation to the work of Standards Committees.

The role of the forum is to share information and so any decisions will have to be made by the individual Standards Committees. There will be times when the Forum would need to make a decision about administrative matters relating to its own practices and administration of meetings.

- Membership – Chair, with the Vice-Chair to attend in the absence of the Chair
- Decision making will typically be by consensus but where a formal decision is required then there will be one vote per authority with the Chair of the Forum having the casting vote
- Election of Chair and Vice Chair – every two years to provide consistency
- Secretariat Support – the WLGA will send out agendas, prepare minutes and can prepare basic reports analysing practice across Wales. Officer support to prepare more extensive reports is dependent upon a monitoring officer from a council volunteering/agreeing to undertake the work
- Frequency of Meetings – 2 meetings per year following a meeting of the Monitoring Officers Group of Lawyers in Local Government
- Agendas items will be suggested by Monitoring Officers based on discussions with their Standards Committees and the Forum will also have a forward work plan to which members could contribute
- Each region will be asked to send 1 Monitoring Officer to represent the local authorities in that area, with 1 additional Monitoring Officer each for Fire & Rescue Authorities and National Park Authorities (making 6 Monitoring Officers in total)

*Each meeting could have a small agenda followed by a Training Session  
Speakers from the Ombudsman's Office, Adjudication Panel for Wales and Welsh Government could address the Forum on their work*

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