



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

**GWŶS I GYFARFOD O'R CYNGOR**

C.Hanagan  
Cyfarwyddwr Materion Cyfathrebu a Phennaeth Dros Dro'r Gwasanaethau  
Llywodraethol  
Cyngor Bwrdeistref Sirol Rhondda Cynon Taf  
Y Pafiliynau  
Parc Hen Lofa'r Cambrian  
Cwm Clydach CF40 2XX

Dolen gyswllt: Jess Daniel - Democratic Services Officer (07385401877)

**DYMA WŶS I CHI** i gyfarfod hybrid o'r **PWYLLGOR SAFONAU** yn cael ei gynnal ar **DYDD MAWRTH, 25AIN EBRILL, 2023** 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 Democraidd erbyn Dydd Gwener, 21 Ebrill 2023 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 Aelodau, yn unol â'r Cod Ymddygiad.

Nodwch:

1. Mae gofyn i Aelodau ddatgan rhif a phwnc yr agendwm y 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. COFNODION**

Cadarnhau cofnodion o gyfarfod y Cyngor a gynhaliwyd ar 18 Tachwedd 2022 yn rhai cywir.

**ADRODDIADAU Y SWYDDOG MONITRO****3. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU –  
CRYNODEB O'R CWYNION 2022-23**

Derbyn crynodeb o'r cwynion yn erbyn Aelodau rhwng 1 Tachwedd 2022 a 31 Mawrth 2023.

17 - 22

**4. OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU -  
CRYNODEB O'R CANFYDDIADAU**

Trafod y crynodebau o dan 'Ein Canfyddiadau' sydd wedi'u cyhoeddi ar wefan Ombwdsmon Gwasanaethau Cyhoeddus Cymru ar gyfer y cyfnod rhwng 1 Tachwedd 2022 a 31 Mawrth 2023.

23 - 30

**5. PENDERFYNIAD PANEL DYFARNU CYMRU**

Darparu adroddiad er gwybodaeth mewn perthynas â Phenderfyniad diweddar gan Banel Dyfarnu Cymru.

31 - 56

**6. ADRODDIAD BLYNYDDOL PANEL DYFARNU CYMRU 2021-2022**

Darparu Adroddiad Blynyddol Panel Dyfarnu Cymru 2021-2022 er gwybodaeth.

57 - 76

**7. FFORWM SAFONAU CENEDLAETHOL - ADBORTH O'R CYFARFOD  
A GYNHALIWDYD AR 27 IONAWR 2023**

Derbyn adborth o gyfarfod diweddaraf y Fforwm Safonau Cenedlaethol a diweddariad llafar gan Gadeirydd y Pwyllgor.

77 - 90

**8. ARGYMHELLION YR ADOLYGIAD ANNIBYNNOL O'R  
FFRAMWAITH SAFONAU MOESEGOL (ADRODDIAD RICHARD  
PENN)**

Derbyn diweddariad mewn perthynas ag argymhellion sy'n deillio o'r adolygiad annibynnol o'r fframwaith safonau moesegol (Adroddiad Richard Penn).

91 - 144

**9. PWYLLGOR SAFONAU - Y DIWEDDARAF O RAN HYFFORDDIANT  
I'R AELODAU**

Derbyn diweddariad ar lafar gan y Swyddog Monitro mewn perthynas â threfnu hyfforddiant i Aelodau'r Pwyllgor yn y dyfodol.

**10. MATERION BRYD**

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

**Cyfarwyddwr Materion Cyfathrebu a Phennaeth Dros Dro'r Gwasanaethau Llywodraethol**

**Cylchreliad:-**

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

**Y Cyngorwyr Bwrdeistref Sirol:** A. Ellis a G. Hughes

**Y Cyngorydd Cymuned** L. Law

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

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 hybrid meeting of the Standards Committee held on Friday, 18 November 2022 at 10.00 am.

This meeting was live streamed, details of which can be accessed [here](#)

### **Standards Committee Members in attendance:-**

Mr D. Bowen (Chair)

### **Independent Members in attendance:-**

Mr J. Thomas Mrs H. John

### **Community Council Representative Members in attendance:-**

Community Councillor Ms L. Law  
Community Councillor Mr C. A. Thomas (Reserve Member)

### **County Borough Councillors in attendance:-**

Councillor A J Ellis Councillor G Hughes

### **Officers in attendance:-**

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

## **21 DECLARATION OF INTEREST**

**RESOLVED** – In accordance with the Members Code of Conduct, the following declaration of personal interests in a matter pertaining to the agenda was declared:-

County Borough Councillor A. Ellis in respect of agenda item 8 “I am Chair of Ynysybwl and Coed-y-cwm Community Council ”.

Reserve Member Community Councillor C. Thomas in respect of agenda item 7 “I am aware of the detail of the complaint referenced to Pontypridd Town Council”.

## **22 TO ELECT A CHAIRPERSON**

**RESOLVED** to elect Independent Member Mr. D. Bowen as Chair of the Standards Committee.

## **23 TO ELECT A VICE-CHAIRPERSON**

Members were advised that there isn't a situation where they are able to proceed with appointing a Vice Chairperson of this Committee, and consequently, it was **RESOLVED** to defer the item to the next meeting.

## **24 MINUTES**

It was **RESOLVED** to approve the minutes of the 16<sup>th</sup> March 2022 as an accurate reflection of the meeting.

## **25 STANDARDS COMMITTEE WORK PROGRAMME 2022 - 2023**

The Monitoring Officer provided Members with the Standards Committee's Work Programme and the proposed items for consideration by the Standards Committee during the Municipal Year 2022-2023.

The Committee were reminded of the Standards Committee's Terms of Reference, which set out the remit of the Committee to monitor, review and advise on matters relating to the Ethical code; Members Code of Conduct and associated matters of governance and probity.

Members' attention was drawn to Appendix 2 of the report, where the draft Work Programme for the Committee for the Municipal Year 2022-2023 was detailed. The Work Programme sought to reflect the ongoing priorities, standard reports and the frequency of reporting for the Committee's consideration.

Members were informed that training would be provided in relation to a mock Disciplinary Hearing to provide them with the experience they need to be able to deal with these should any arise in the future.

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

1. To adopt the Standards Committee Work Programme for the 2022/2023 Municipal Year subject to any matters that arise during the year being able to be considered as necessary.
2. To provide Members with a mock

## **26 ORAL UPDATE - CODE OF CONDUCT TRAINING**

The Monitoring Officer provided the Committee with an oral update in respect of the Code of Conduct training and reported that following the elections in May, 74 Elected Members have undertaken the necessary training, besides from one Member who was recently elected following a recent bi-election and will receive the training in due course.

Members were advised there has been a significant number of Community Councillors who attended Code of Conduct training, which was provided by the Monitoring Officer, however, it was suggested that he would contact the Clerks to the Community Councils to check which training they have taken up and been offered through the Community Councillors and will report back to the Committee at the next meeting.

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

- 1 To note the information received.

**27 PUBLIC SERVICES OMBUDSMAN FOR WALES - SUMMARY OF COMPLAINTS 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> March 2022 – 31<sup>st</sup> October 2022.

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

The Monitoring Officer provided detail on each complaint whilst ensuring anonymity is retained and noted that Members will find the Ombudsman's comments and conclusions on each matter helpful to understand how they approach dealing with a complaint.

The Monitoring Officer drew Members 'attention to the fact there were 3 complaints made against Community Councillors and 0 complaints made against County Borough Councillors. However, none of those complaints reached the investigation stage.

The Standards Committee **RESOLVED:**

1. To note the content of the report.

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

The Monitoring Officer provided Members with a summary of matters pertaining to standards of conduct of County, Town and Community Councillors as set out in the Public Services Ombudsman for Wales' ('PSOW') Annual Report and Annual Letter to this Council for 2021-2022.

The Annual Report 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). Furthermore, 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).

Members learned 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.

Public Services Ombudsman for Wales 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. Furthermore, there were 5 complaints about members of National Park Authorities and 4 related to members on Police and Crime Panels.

The Monitoring Officer noted that as in previous years, about half of the new Code of Conduct complaints that the PSOW received were about 'promotion of equality and respect' and many of these cases, categorised by the PSOW under 'respect', are lower-level complaints. Furthermore, 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.

The Monitoring Officer reported 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. In addition, 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.

Members learned that 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 and also twice as many as last year and the highest number of referrals that were made since 2012/13. Furthermore, 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.

The Monitoring Officer reported that 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 and they would also encourage greater use of local resolution procedures. Furthermore, 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.

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

- 1 To note the matters relating to Code of Conduct Complaints reported in



## 29 PUBLIC SERVICES OMBUDSMAN FOR WALES - RECENT INVESTIGATION OUTCOMES - 'OUR FINDINGS'

The Monitoring Officer provided Members with 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.

Members learned that 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.

Furthermore, it was 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.

Members learned that 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) and the final edition of the Casebook (edition 25) covered the period of January to March 2021. Furthermore, 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.

The Monitoring Officer reported that 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 Monitoring Officer went on to describe the 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.

In addition, 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.

The Standards Committee **RESOLVED:**

1. To note and consider the contents of the summary of investigation outcomes concerning alleged breaches of the Members' Code of Conduct.

## **2 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.

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.

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.

## **31 DISPENSATION APPLICATIONS**

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

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

Members were informed that County Borough Councillor Michael Powell's wife works in the Children's Services department as a Contact Worker. In his application Councillor Powell stated that his wife is not in a decision-making position.

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

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

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

The Standards Committee **RESOLVED:**

1. To grant 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.

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

The Monitoring Officer advised Members of 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').

Members were informed that 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 and the legislative changes Were previously reported to the Committee on 19<sup>th</sup> March 2021 and include: 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 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.

Furthermore, in complying with the new duties, political group leaders and standards committees must have regard to any guidance issued by the Welsh Ministers.

Members learned that 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'.

Furthermore, 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).'

Members were advised that 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. Furthermore, group leaders should also report compliance with their duty to the standards committee, which 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.'

The Monitoring Officer reported that 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. Moreover, the standards committee should then consider each report and provide feedback to the group leaders.'

The Committee were advised that Monitoring Officers across Wales have discussed and refined a proforma Group Leaders' Report, originally drafted by Flintshire CBC's Monitoring Officer, which was shown at Appendix 2 in the report.

Furthermore, it is proposed that a Group Leader's report be received on a biannual basis, subject to any feedback from Committee Members.

Members were advised that 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. Also, 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 was included in the report.

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. Additionally, 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.

The Standards Committee **RESOLVED:**

1. Approve the proforma Group Leaders Report, attached at Appendix 2, subject to any agreed amendments;
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;
3. Agree to consider the Group Leaders' Reports at the March 2023 Committee meeting;
4. Agree the frequency on which group leaders are to be asked to report to the Committee thereafter; and
5. Agree what training should be provided to assist group leaders to comply with their new duties.

### **33 ORAL UPDATE - PSOW LETTER TO STANDARD COMMITTEE CHAIRS & UPDATED OMBUDSMAN GUIDANCE**

The Monitoring Officer provided Members with a letter from the new Public Services Ombudsman for Wales whereby its main purpose is to notify the Standards Committee that new Code of Conduct guidance is being published by the office and this has been appended to the letter.

Members were advised that some minor changes have been made to the

process of the Code of Conduct guidance, however, the Monitoring Officer has requested that the track changes be provided by the PSOW to fully understand the changes made.

The Monitoring Officer reported that Members will be advised to familiarise themselves with the new Code of Conduct guidance following any future training and it is the intention to circulate the new guidance to Clerks to the Community Councils for them to disseminate to Community Councillors.

Members were advised that the PSOW will continue to share their decisions with Monitoring Officers, as required by legislation. However, they will now be sharing the complaint and their 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).

Members learned that since June, the PSOW have been trialling a fresh approach to how they inform members about complaints made against them. Their practice had been that they informed the accused member, the Monitoring Officer, and the Clerk (if a Town/Community Council) of a complaint as soon as it was received. They now inform the relevant parties at the point when they either decline to investigate or decide to investigate the complaint. Furthermore, during the trial, they found that this approach sped up the 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.

The Monitoring Officer outlined that whenever possible, the PSOW would like to see any concerns about a member's conduct to be resolved locally and at an early stage, as this calms situations down and prevents the need for further escalation and formal investigation by my office. Furthermore, it was noted that the PSOW and members of the public, expect all members to take advantage of training which is available to them.

In response to a query raised in relation to training that is being provided, the Monitoring Officer reported that he would recommend to Chairs and Clerks of Community Councils to undertake the necessary training.

The Standards Committee **RESOLVED:**

- 1 To note the information received.

### **3 NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS AND VICE-CHAIRS**

The Monitoring Officer provided with an update in respect of the National Forum for Standards Committee Chairs and consider the Forum's draft Terms of Reference.

Members were advised that 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.”

Members learned that 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. Furthermore, whilst acknowledging the place for local decision making, he recommends that a National Forum be established along the same lines – at 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.” Furthermore, 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.

In addition, 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.

The Monitoring Officer advised that the body will consist of 28 constituent authorities at the outset, also, 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. Moreover, 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 and Monitoring Officers will send one representative per region.

Members learned that previously the North and Mid Wales Forum would meet in person on a peripatetic basis being hosted by each authority in turn. However, 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.

The Monitoring Officer outlined the draft Terms of Reference which also include proposals for how the work of the forum will be supported.

The Standards Committee **RESOLVED:**

1. That the Committee agrees the National Forum’s draft Terms of Reference as set out in Appendix 1 to the report; and
2. That the proposed arrangements to support the National Forum are approved.

**This meeting closed at 11.09 am**

**Mr D. Bowen  
CHAIR.**





## RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

### STANDARDS COMMITTEE

25 APRIL 2023

### **PUBLIC SERVICES OMBUDSMAN FOR WALES – SUMMARY OF COMPLAINTS AGAINST MEMBERS – 1<sup>ST</sup> NOVEMBER 2022 – 31<sup>ST</sup> MARCH 2023**

#### **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> November 2022 – 31<sup>st</sup> March 2023.

#### **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> November 2022 – 31<sup>st</sup> March 2023.

#### **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> November 2022 – 31<sup>st</sup> March 2023:

Date Notification Received by the Ombudsman	Body & Cllr	Nature of Complaint	Ombudsman Investigation Yes/No
01/12/22	Rhondda Cynon Taf County Borough Council (County Borough Councillor)	<p>It was alleged that the Member failed to show respect and consideration and used bullying behaviour towards another Councillor when making comments on social media.</p> <p><b>PSOW Decision</b></p> <p><b>(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct.</b></p> <p>It appeared to the PSOW that the matters complained about are unlikely to amount to a breach of the Code.</p> <p>It is not uncommon for elected members to say things about political opponents which others may consider to be rude or offensive. However, it is not the purpose of the Code of Conduct to inhibit free speech and the robust expression of political differences. Councillors have a wide freedom of expression both in a personal and professional capacity. Article 10 of the European Convention on Human Rights, which affords the Member the right to free speech, means that they can say things which may be shocking or offensive to some people. Whilst the PSOW appreciated that the complainant may be personally offended by the comments, they did not consider on the evidence provided that they are sufficiently offensive, intimidating or insulting to amount to bullying behaviour (within the meaning of the Code) or a breach of the Code.</p> <p><b>(2) Whether an investigation is required in the public interest</b></p> <p>Even if the alleged breach were to be proven, an investigation would not be in the public interest. It is not uncommon for elected members to say things about political opponents which others may consider to be rude or offensive. Although PSOW accepted that discussions can sometimes become “heated”, in such cases, the Ombudsman generally concludes that during political exchanges, members need a “thicker skin”.</p> <p>PSOW concluded that, whilst the Member has made comments which could be personally offensive or rude to the complainant they were of the view that they were not so egregious as to warrant an investigation by this office</p>	No

03/02/22	Llantwit Fardre Community Council (Community Councillor)	<p>It was alleged that a Member said, “keep him off”, indicating to a member of staff that the complainant should be kept muted when they had attended to ask a question [at a Council Meeting]. The question was then read out by the Chair of the Council and the complainant said they were not given the opportunity to ask their own question which they said contravened the Council’s standing orders.</p> <p><b>PSOW Decision</b></p> <p><b>(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct.</b></p> <p>The matters which complained about are unlikely to amount to a breach of the Code. The complainant has said that they were not allowed to read their own question and this is a breach of the Standing Orders. This is not a matter for the Code of Conduct. The complainant has indicated that they will complain about the failure to follow process directly to the Council. The Member’s involvement in that alleged failing would therefore fall to be considered under that process.</p> <p>PSOW considered Member’s involvement in this matter and did not consider that it would amount to a breach of the Code of Conduct. The language used by the Member is unlikely to be considered rude, offensive, or even disrespectful. The complainant was aggrieved that they were not able to personally ask their question but acknowledged that the question was asked by the Chair on their behalf, therefore PSOW could not see that the Member’s actions were suggestive of a breach of any paragraph of the Code of Conduct.</p> <p><b>(2) Whether an investigation is required in the public interest</b></p> <p>The conduct complained about did not meet the first stage of the Ombudsman’s test, therefore, there was no need to consider the second stage of the test (public interest).</p>	No
03/02/23	Llantwit Fardre Community Council (Community Councillor)	<p>It was alleged that the member (Cllr X) conspired with two other members to prevent the complainant from speaking at a Council meeting. It was also alleged that the Member verbally attacked the complainant.</p> <p><b>PSOW Decision</b></p> <p><b>(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct.</b></p>	No

		<p>No evidence was provided to substantiate the complaint, and the Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code.</p> <p>The complainant said that it was obvious that the three elected members had conspired to keep them from speaking but provided no evidence of any actions by the member referred to in the complaint to support that allegation. The complainant said the Member verbally attacked them but provided no information about what was said.</p> <p><b>(2) Whether an investigation is required in the public interest</b></p> <p>The conduct complained about does not meet the first stage of the test, as set out above, therefore, there is no need to consider the second stage of the test.</p>	
08/02/23	Llantwit Fardre Community Council (Community Councillor)	<p>It was alleged that the member (Cllr Y) conspired with two other members to prevent the complainant from speaking at a Council meeting. It was also alleged that the Member verbally attacked the complainant.</p> <p><b>PSOW Decision</b></p> <p><b>(1) Whether there is evidence to suggest that there have been breaches of the Code of Conduct.</b></p> <p>No evidence was provided to substantiate the complaint, and the Ombudsman will not investigate unless there is reasonably strong evidence to suggest that the member concerned has breached the Code.</p> <p>The complainant said that it was obvious that the three elected members had conspired to keep them from speaking but provided no evidence of any actions by the member referred to in the complaint to support that allegation. The complainant said the Member verbally attacked them but provided no information about what was said.</p> <p><b>(2) Whether an investigation is required in the public interest</b></p> <p>The conduct complained about does not meet the first stage of the test, as set out above, therefore, there is no need to consider the second stage of the test.</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**

**25 APRIL 2023**

**REPORT OF THE MONITORING OFFICER**

**Background Papers:** Freestanding matter

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



## RHONDDA CYNON TAF

### RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

#### STANDARDS COMMITTEE

25 APRIL 2023

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

#### INFORMATION 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> November 2022 – 31<sup>st</sup> March 2023.

#### 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 (for the period 1<sup>st</sup> November 2022 – 31<sup>st</sup> March 2023).

#### 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 The appendix to this report contains a summary of those cases, originally published in ['Our Findings'](#) between the 1<sup>st</sup> November 2022 – 31<sup>st</sup> March 2023.



**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**STANDARDS COMMITTEE**

**25 APRIL 2023**

**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)

Tudalen wag

**SUMMARY OF PSOW INVESTIGATION OUTCOMES CONCERNING ALLEGED MEMBERS' CODE OF CONDUCT BREACHES - 1<sup>ST</sup> NOVEMBER 2022 – 31<sup>ST</sup> MARCH 2023**

**Disclosure & register of interest: St Harmon Community Council**

Report date - 29/11/2022

Outcome - - Referred to the Adjudication Panel for Wales

The Ombudsman's office received a complaint that a former member of St Harmon Community Council ("the Council") had breached 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.

**Disclosure & register of interest: Porthcawl Town Council**

Report date - 30/11/2022

Outcome - No Action Necessary

The Ombudsman received a complaint that a member ("the Member") of Porthcawl Town Council ("the Town Council") had breached the Code of Conduct for Members.

It was alleged that the Member had failed to declare a personal and prejudicial interest regarding an association with an employee ("the Employee") of a company which the Town Council had contracted for work. It was also alleged that the Member had allowed an inaccurate Internal Audit report to be published on the Town Council's website. The Ombudsman determined that investigation of the allegations concerning interests was appropriate, and the investigation considered whether the Member's conduct may have breached paragraphs 6(1)(a), 7(a), 11(1), 14(1)(a) and 14(1)(b) of the Code of Conduct.

Information was obtained from the Town Council, including relevant minutes and emails. Witnesses, including the complainant, and the Member were also interviewed.

The investigation found that the Member and Employee had had a short relationship in 2020, during which it was likely that the Member had a personal and prejudicial interest which they would have needed to declare and withdraw from relevant meetings where associated matters were discussed, or in approving invoices. The evidence obtained suggested that the Member had not approved invoices whilst the relationship was ongoing, and whilst they had attended several Town Council meetings, which included associated items, only one of these meetings fell within the period of the relationship. The Ombudsman determined that the Member may therefore have breached paragraphs 11(1), 14(1)(a) and 14(1)(b) of the Code of Conduct with regard to the meeting within the relevant period.

It was found that as the Member and Employee's association was neither close or acrimonious after the relationship ended, the interest was no longer personal and prejudicial. The Ombudsman's investigation also found there was insufficient evidence to suggest the Member had used their position improperly or brought their office as a member of the Town Council into disrepute in breach of paragraphs 6(1)(a) or 7(a) of the Code of Conduct.

The Ombudsman considered that in the light of the limited involvement in the Town Council's business during the relationship and the fact that the Member had reflected on their position and that they should have considered their obligations under the Code and sought advice, it was unlikely a sanction would be imposed and it was not in the public interest to take further action in respect of the matter. However, it was recommended that the Member should attend refresher training on the Code of Conduct in respect of the matters investigated.

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 & respect: Radyr and Morganstown Community Council**

Report date - 05/12/2022

Outcome - No Evidence of Breach

The Ombudsman received a complaint that a Member ("the Member") of Radyr and Morganstown Community Council ("the Council") had breached the Code of Conduct.

It was alleged that the Member made racist comments to another member of the Council by making a seemingly out of context and negative reference to a political and religious figure to the Complainant who was of the same religion as that figure. The Ombudsman determined that an investigation into the comments was appropriate and considered whether the Member's conduct may have breached paragraphs 4(a), 4(b), 4(c) and 6(1)(a) of the Code of Conduct.

Information was obtained from the Council, including relevant meeting minutes and emails. Witnesses, including the complainant, and the Member were also interviewed.

The investigation found that the Member's comments could reasonably be said to fall within the realms of freedom of expression. The investigation found that the Member's explanation for his comments, the fact that he had posted previously on social media about similar issues and that he said that he did not intend to be disrespectful to the Complainant and her faith suggested that he was entitled to express his views. His comments did not go beyond what was lawful comment and did not amount to gratuitous or personal comment or hate speech. The Ombudsman was not persuaded that the comments amounted to a breach of paragraph 4(a), 4(b), 4(c) or 6(1)(a) of the Code of Conduct.

The Ombudsman found that under Section 69(4)(a) there was no evidence of any failure to comply with the Code of Conduct.

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

Report date - 20/02/2023

Outcome - Referred to Standards Committee

The Ombudsman received a complaint that a Member of Haverfordwest Town Council ("the Council") had breached the Code of Conduct for Members of the Council. The report on the investigation was referred to the Monitoring Officer of Pembrokeshire County Council for consideration by its Standards Committee.

### **Objectivity and propriety : Powys County Council**

Report date - 22/02/2023

Outcome - Referred to Adjudication Panel for Wales

The Ombudsman's office received complaints that a Member of Powys County Council had breached 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.

Tudalen wag



## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**25 APRIL 2023**

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

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

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

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

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

- 2.1 It is recommended the Committee considers the recent decision 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 decision appended to the report:

Appendix 1 - APW/011/2021-022/CT – Former Councillor Sheila Jenkins (St Harmon Community Council)

3.3 The Committee may find it helpful to consider such 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 APW Panel 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**

**25 APRIL 2023**

**REPORT OF MONITORING OFFICER**

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

**BACKGROUND PAPERS**

**Freestanding Matter**

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

Tudalen wag

**DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/011/2021-022/CT

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

**RESPONDENT:** Former Councillor Sheila Jenkins

**RELEVANT AUTHORITY:** St. Harmon Community Council

**1. INTRODUCTION**

1.1. A Case Tribunal was convened by the President of the Adjudication Panel for Wales ('APW') to consider a reference in respect of the above Respondent which was made by the Public Services Ombudsman for Wales ('the PSOW').

1.2 On 2 December 2022, the Tribunal Registrar wrote to the Respondent and, in accordance with regulation 3(1) of the Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001, the letter required the Respondent to send written acknowledgement, indicating whether she wished the reference to be determined by way of written representations or oral hearing. The Respondent did not reply.

1.3 On 27 January 2023, 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 17 March 2023 and was conducted by means of remote attendance technology.

## **2. ALLEGATIONS**

2.1 By letter dated 29 November 2022, the Ombudsman made a referral to the APW and submitted a Report in relation to allegations made against the Respondent, these allegations being as follows.

2.1.1 That the Respondent failed to declare personal and prejudicial interests at two Council meetings, despite being aware that she had such interests, and remained in the meeting room and addressed Council on both occasions. The PSOW considered that the Respondent's actions were therefore suggestive of breach of paragraphs 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct for Members ('the Code').

2.1.2 That the Respondent used emotive terms in addressing Council and took part in votes at both meetings and in doing so, the Respondent's conduct could reasonably be perceived as being capable of influencing the decision of the Council. The PSOW also alleged that presence alone at those meetings was capable of influencing the Council's decision-making and that the conduct could also be perceived as attempting to secure an advantage for another person by taking part. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraphs 7(a) and 14(1)(c) of the Code.

2.1.3 That the Respondent's conduct at the meetings and subsequent press coverage may have brought the Respondent's Council and/or her office as a member into disrepute. The PSOW also alleged that knowingly disregarding the Code of Conduct showed lack of regard for the ethical standards regime in Wales which may affect public confidence in local democracy. The PSOW considered that the Respondent's conduct was therefore suggestive of a breach of paragraph 6(1)(a) of the Code.

2.2 The evidence was contained in the Tribunal Bundle which comprised the PSOW's Report and linked correspondence.

## **3. FINDINGS OF FACT**

### **Undisputed Material Facts**

3.1 The Listing Directions dated 27 January 2023 afforded the opportunity for the parties to make further written submissions to the Case Tribunal regarding the Undisputed Material Facts.

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

3.2.1 The Respondent was co-opted as a Member of the Relevant Authority in March 2019 and signed a declaration of acceptance of office and undertaking to abide by the Code of Conduct for Members.

- 3.2.2 The Respondent chose not to attend training on the Code of Conduct for Members.
- 3.2.3 The Respondent is married to the former Chairman of the Council who was Chairman at the relevant time.
- 3.2.4 The Respondent attended Council meetings on 1 April and 3 November 2021 in which an Audit Wales Report was discussed.
- 3.2.5 The Respondent did not seek any advice on whether she should declare personal and prejudicial interests and did not seek a dispensation from the relevant Standards Committee to take part in the meetings.
- 3.2.6 The Respondent did not declare personal and prejudicial interests at either meeting and she remained in both meetings.
- 3.2.7 A decision made by the Council in April 2021 related to an Audit Wales report which included reference to a person with whom the Respondent had a close personal relationship. A decision made by the Council in November 2021 directly affected a person with whom the Respondent had a close personal relationship.
- 3.2.8 The Respondent's decision not to declare any interests was deliberate as she considered that she would be asked to leave the meeting if she had declared such interests.
- 3.2.9 The Respondent said that she abstained from voting at the April meeting, as she had not been on the Council at the relevant time, and also as she was the Chairman's wife.
- 3.2.10 The Respondent addressed Council at the April meeting and was present for the vote in which the Council resolved to write to Audit Wales to point out certain factual inaccuracies in the report.
- 3.2.11 The Respondent addressed the Council at the November meeting and the relevant minutes record that she said that "Audit Wales had it in for the chairman from the start and had been hanging around his neck, which is disgusting".
- 3.2.12 The minutes record that the Respondent took part in a vote at the November meeting upon a proposal to accept the findings of the report of Audit Wales and to report the Chairman to the office of the PSOW.
- 3.2.13 The minutes record that the Respondent voted against the proposal.
- 3.2.14 The minutes record that the Respondent abstained in a vote upon a proposal to report the Respondent to the office of the PSOW.
- 3.2.15 The Respondent did not declare a personal or prejudicial interest regarding the vote on a proposal to refer her to the office of the PSOW.

3.2.16 The Respondent was directly affected by the decision made by the Council in November 2021 to refer her to the office of the PSOW.

3.2.17. The Respondent resigned from the Council on 4 November 2021, the day after the November meeting.

3.2.18 There was subsequent press coverage of the November 2021 Council meeting.

### **Disputed Material Fact**

3.3 There was one Disputed Material Fact outlined in the PSOW Report. This was whether the Respondent intended to influence Council decisions at the meetings in April and November 2021. The Case Tribunal noted the following submissions by the parties.

#### **The PSOW's submissions**

3.3.1 The PSOW's submissions in this respect, as contained in the Report dated 29 November 2022, were that the Respondent had been clear that she attended the meetings to defend her husband and the PSOW could "*see no other reason for taking such a step, if not to influence the discussion and the decisions of the other members.*" The PSOW considered that by failing to declare interests, by addressing Council, and taking part in proceedings at both meetings, (including a vote on whether to accept the findings of the Audit Wales Report and to refer her husband to the PSOW's office), the Respondent intended to influence the decisions being made in relation to the Report.

3.3.2 The PSOW was also of the view that, even if the Respondent had abstained from voting, her presence alone was capable of influencing the Council's decision-making process.

3.3.3 The PSOW further considered that by using emotive terms such as "*hands around his neck*" and "*scapegoat,*" and taking part in votes at both meetings, that the Respondent's conduct could reasonably be perceived as capable of influencing the decisions of the Council.

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

3.3.4 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 2 December 2022 nor the Listing Directions dated 29 January 2023.

3.3.5 During her interview and in a statement to the PSOW however, the Respondent stated that she had addressed the Council to support and defend her husband. She was emphatic that she was not trying to influence the decisions being made by Council. She said she was just putting forward her husband's side of the story and did not have any thought of influencing anybody. She said that she knew she would not influence anybody. She had been angry about the comments being made about her husband as she said he was a good man. She appreciated that it might sound melodramatic but thought there had been a move to destroy him. She said that she "*wanted to be there to at least be in his corner.*"

### **Case Tribunal's determination as to the Disputed Material Fact**

3.3.6 The Case Tribunal noted that the Respondent had not declared any interest at the meeting of 1 April 2021. The Minutes do not record the comments made by the Respondent at the meeting, however the evidence suggests that she did take part in discussions but abstained from voting on this occasion. She said that this was because she had not been a member of the Council at the time of the events raised in the Audit Wales report. She also said that this was because her husband was the Chairman referenced in the report.

3.3.7 It noted that the Respondent likewise did not declare any interest at the meeting of 3 November 2021. It was clear in this instance that the Respondent addressed the meeting, and the minutes recorded her comments. She also voted against a recommendation to report her husband to the PSOW under the Code. She abstained from voting following a proposal to refer herself to the PSOW.

3.3.8 The Case Tribunal considered that the PSOW's interview of the Respondent showed her responses to be honest and straightforward. However, despite her emphatic response that she had not intended to influence anyone, the Case Tribunal considered that, whether consciously or subconsciously, she had nevertheless intended to influence the decision of Council. The Respondent made it clear that she had been at the meeting to defend her husband and to "*be in his corner*" and her interview responses made it clear that she knew that she was acting in breach of the Code.

3.3.9 The Case Tribunal was satisfied that the reasons for not declaring interests, remaining in the meeting and addressing the Council about the recommendation to refer her husband to the PSOW, were all to try to convince the Council that her husband should not be so referred. The Respondent thought that there were entrenched views within the Council which she could not influence. However, the Case Tribunal considered that, on balance, the Respondent intended to influence the discussion at the meeting of the 3 November 2021. This was supported by the fact that during her interview she said that her only regret was that she did not explain herself better when defending her husband. In addition, in voting against the proposal to refer her husband to the PSOW, the Case Tribunal considered that this was also an attempt to influence the outcome of the meeting, as one vote is often capable of changing the outcome.

3.3.10 The Case Tribunal therefore found by unanimous decision in relation to the Disputed Material Fact that the Respondent had intended to influence a Council decision at the meeting of 3 November 2021.

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

4.1 The Listing Directions dated 27 January 2023 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.

4.2 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 as found above.

4.3 As to the alleged breach of the Code of Conduct, the Case Tribunal noted the following submissions by the parties.

**Paragraphs 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.**

4.4 Paragraph 11(1) of the Code of Conduct states that; *‘Where a member has a personal interest in any business of their authority and they attend a meeting at which that business is considered, they must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.’*

Paragraph 14(1)(a) of the Code of Conduct states that; *‘Subject to sub-paragraphs (2), (2A), (3) and (4), where a member has a prejudicial interest in any business of their authority they must, unless they have obtained a dispensation from their authority’s standards committee withdraw from the room, chamber or place where a meeting considering the business is being held —*

*i. where sub-paragraph (2) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and, in any event, before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or*

*ii. in any other case, whenever it becomes apparent that that business is being considered at that meeting.’*

Paragraph 14(1)(e) of the Code of Conduct states that; *‘Subject to sub-paragraphs (2), (2A), (3) and (4), where a member has a prejudicial interest in any business of their authority they must, unless they have obtained a dispensation from their authority’s standards committee, not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.’*

**The PSOW’s Submissions**

4.4.1 The PSOW’s submissions as contained in the Report dated 29 November 2022 are that the Respondent’s conduct was suggestive of a breach of paragraphs 11(1), 14(1)(a), 14(1)(c) and 14(1)(e) of the Code of Conduct for the following reasons.

4.4.2 The PSOW stated that the Respondent failed to declare personal and prejudicial interests at Council meetings on 1 April and 3 November 2021 when the Audit Wales report was discussed. *“Despite being fully aware that she had a personal and prejudicial interest, that she was required to declare them and that there would be potential consequences for not doing so, she remained in the meeting room and addressed Council on both occasions.”*



## The Respondent's Submissions

4.4.3 The Respondent did not provide formal submissions in response to the Tribunal's letter dated 2 December 2022 nor the Listing Directions dated 29 January 2023.

4.4.4 During her interview, the Respondent was asked about her understanding of what elected members should do as regards personal interests. She said that members should declare an interest and then leave the meeting. She made it clear that she had not wanted to leave the meeting and therefore did not declare an interest because she wanted to be there for her husband. She accepted that the Clerk had wanted relevant members to declare an interest. She therefore accepted that she had a personal interest and said; *"I was aware of what I was doing, yes."*

4.4.5 As to prejudicial interests, the Respondent's understanding of the concept was *"...probably prejudicial in the councillors that were trying to pull the council down yes."* In relation to the meeting of 3 November 2021, she recognised that she had an interest and that she had not received dispensation from Powys County Council to speak and vote at the meeting.

4.4.6 In summary, the Respondent accepted that she did have interests in the meetings and the reason she did not declare those interests was that she *"wanted to stay in the meeting to support my husband"* and that *"He couldn't support himself which I find disgraceful, he was not allowed, even criminals in court are allowed to defend themselves, he has been given no opportunity to defend himself in front of the public, at all"*. The Respondent made it clear that as regards declaring interests, she did not think she would have done anything differently, *"because my husband comes first."*

### **Case Tribunal's determination as to alleged breach of paragraph 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.**

4.4.7 In considering this matter, the Case Tribunal also considered the relevant provisions of the Code which explain the nature of personal and prejudicial interests as follows: -

4.4.8 A personal interest in this context is defined in Paragraph 10(2) of the Code as *'You must regard yourself as having a personal interest in any business of your authority if (c) a decision upon it might reasonably be regarded as affecting (i) your well-being or financial position, or of a person with whom you live, or any person with whom you have a close personal association.'*

4.4.9 A prejudicial interest in this context is defined as *'..where you have a personal interest in any business of your authority you also have a prejudicial interest in that business if the interest is one which a member of the public with knowledge of the relevant fact would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest'*.

4.4.10 In considering this matter, the Case Tribunal also had regard to the PSOW Guidance for Members of Community and Town Councils. As to paragraphs 11(1), 14(1)(a) and 14(1)(e) it states: -

*'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...*

*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 or 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.*

*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'.*

4.4.11 The Guidance provided a case example, where the business being discussed was about a financial benefit for the member's future spouse. It was decided that the interest was one that would affect the public perception of the member's ability to act in the public interest. It was reiterated that the test was not whether the member took the decision without prejudice, but whether he would have been seen to have done so.

4.4.12 As to prejudicial interests, the Guidance states that the test is an objective test and that also:

*'3.30 ... the interest must be perceived as likely to harm or impair your ability to judge the public interest.*

*3.32 ...You should clearly act in the public interest and not in the interests of any close personal associates...*

*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...*

*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.'*

4.4.13 Whilst the business of the meeting of 1 April 2021 appeared to deal with the narrow issue of the factual accuracy or otherwise of the draft Audit Wales report, the business did also partly relate to the former Chairman. The Case Tribunal considered that whilst the draft report dealt with wide-ranging governance and financial concerns

applicable to the Council as a whole, it did also specifically refer to three individuals, one of whom was the Respondent's husband. The Respondent's husband had declared a personal and prejudicial interest and had left the meeting accordingly.

4.4.14 The Case Tribunal concluded that the Respondent had a personal interest in the business of the meeting of 1 April 2021, as the Council's decision might reasonably be regarded as affecting her husband's well-being. The Case Tribunal also considered this interest to be a prejudicial interest as it was clearly so significant that it was likely to prejudice the Respondent's judgment of the public interest. It noted from the evidence that the Respondent failed to declare any interests, remained in the meeting and addressed the meeting.

4.4.15 As to the meeting of 3 November 2021, the Case Tribunal considered that the Respondent had a clear personal interest, as one of the recommendations in the Audit Wales report directly affected the Respondent's husband. One of the recommendations made by Audit Wales was to consider whether matters raised in its report should be referred to the PSOW, as potential breaches of the Code. The Council duly decided to report the former Chairman to the PSOW. The Case Tribunal also considered that the personal interest was one which a member of the public would reasonably regard as being so significant that it was likely to prejudice the Respondent's judgment of the public interest.

4.4.16 The Case Tribunal also noted a further undisputed material fact that, not only did a decision of 3 November 2021 directly affect a person with whom the Respondent had a close personal relationship, but a second decision also directly affected herself. Again, the Respondent remained in the meeting, did not declare her clear personal and prejudicial interests in this respect and did not withdraw from the meeting once an additional proposal was made that the Respondent be reported to the PSOW

4.4.17 The Case Tribunal noted that the Respondent spoke but abstained in the vote on the 1 April 2021 and abstained in the vote relating to the proposal to refer herself to the PSOW in the meeting of 3 November 2021. Nevertheless, the Case Tribunal considered that the business of the meetings could reasonably be regarded as affecting the well-being of both the Respondent and her husband, as a referral to the PSOW would have been a matter of concern, embarrassment and discomfort to both. The Case Tribunal found that as the Respondent had not withdrawn from either meeting and had also made oral representations at the meetings and had not received dispensation to do so, the Respondent was in clear breach of the Code.

4.4.18 The Case Tribunal considered that the Respondent's answers during her interview indicated that she had not fully appreciated the requirements of the Code. She had equated declaring a personal interest with a requirement to leave the meeting, which was not the case. In addition, as to prejudicial interests, her answer during her interview indicated that she had not fully appreciated the meaning of this paragraph. Finally, the Case Tribunal noted that this was not a case where the Respondent was attempting to hide the fact that she was related to the former Chairman. Nevertheless, the Case Tribunal noted that the Respondent accepted that she was aware that she was acting in breach of the Code's provisions.

4.4.19 The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 11(1), 14(1)(a) and 14(1)(e) of the Code of Conduct.

### **Paragraphs 7(a) and 14(1)(c) of the Code of Conduct.**

4.5 Paragraph 7(a) of the Code of Conduct states that; *‘Members must not in their official capacity or otherwise, use or attempt to use their position improperly to confer on or secure for themselves, or any other person, an advantage or create or avoid for themselves, or any other person, a disadvantage.* Paragraph 14(1)(c) of the Code of Conduct states that; *“...where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority’s standards committee – not seek to influence a decision about that business”.*

### **The PSOW’s Submissions**

4.5.1 The PSOW’s submissions as contained in the Report dated 29 November 2022 are that the Respondent’s conduct was suggestive of a breach of paragraphs 7(a) and 14(1)(c) of the Code of Conduct for the following reasons.

4.5.2 The PSOW considered that the Respondent had been clear that she attended the two meetings to defend her husband. She did so knowingly and in breach of the Code of Conduct. The PSOW could see no other reason for taking such a step, if not to influence the discussion and the decisions of the other members. The PSOW was therefore satisfied that the Respondent intended to influence the decisions being made in relation to the Audit Wales report. Even if the Respondent had abstained from voting, it considered that her presence alone would have been capable of influencing the decision-making process.

4.5.3 The PSOW was of the view that by addressing Council, using emotive terms such as *“hands around his neck”* and *“scapegoat.”* By taking part in votes at both meetings, the PSOW considered that the Respondent’s behaviour could reasonably be perceived as being capable of influencing the decision of the Council. The PSOW also considered that by participating in voting, this could be perceived as the Respondent attempting to secure an advantage for her husband.

### **The Respondent’s Submissions**

4.5.4 The Respondent did not provide formal submissions in response to the Tribunal’s letter dated 2 December 2022 nor the Listing Directions dated 29 January 2023.

4.5.5 During her interview and in her statement, the Respondent stated that she had addressed the Council to support and defend her husband. She was adamant that she was not trying to influence the decisions being made by Council. She said she was just putting his view forward and his side of the story and did not have any thought of influencing anybody. Indeed, she said that she knew she would not influence anybody. She said she had been angry at the comments being made about her husband with which she disagreed. She said in response to the PSOW’s questions regarding 7(a) that *“I wanted to be there to at least be in his corner”.* *“I just ...know that he has been treated*

*appallingly, and....that as his wife of over 50 years, I wanted to support him. He wasn't able to defend himself, that wasn't allowed, which I found absolutely disgusting, and against his human rights."*

**Case Tribunal's determination as to alleged breach of paragraphs 7(a) and 14(1)(c) of the Code of Conduct.**

4.5.6 In considering this matter, the Case Tribunal had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code. As to paragraph 7(a) it states: -

*2.54 '... You should not use, or attempt to use, your public officer 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.*

*3.40...you must not seek to influence a decision in which you have a prejudicial interest. This rule is similar to the 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.*

*3.45 You must not make any representations or have any involvement with decisions in which you have a prejudicial interest... 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.'*

4.5.7 The Case Tribunal considered that in the light of its finding on the Disputed Material Fact above, the Respondent had intended to influence proceedings and decisions of the Council. As to Paragraph 7(a) of the Code, the Case Tribunal considered that the wording of the Paragraph required a degree of intent or knowledge that the member's actions could influence others. In the light of its finding on the Disputed Material Fact and the evidence, the Case Tribunal was satisfied that the Respondent's failure to declare interests, her participation in meetings and particularly her voting on her husband's position, were all actions designed to try to prevent him being reported to the PSOW. It considered that her actions in the meeting of 3 November 2021 were either a conscious or subconscious attempt to use her position to avoid a disadvantage for her husband.

4.5.8 As to the comments which the PSOW alleged were suggestive of a breach of paragraph 7(a) of the Code, these were quoted in the press as *"The way [Audit Wales] have personally gone for the chairman with their hands around his neck is disgusting. He has been made a scapegoat"*. The Minutes recorded it in slightly different terms that the Respondent had said as follows *"Audit Wales had it in for the chairman from the*

*start and had been hanging around his neck, which is disgusting.*” There was no clear evidence to confirm whether the press had been present at the meeting of 3 November 2022 or whether the Respondent’s comments had been passed on to the press. The Case Tribunal was satisfied however that the Minutes provided an official record of the meeting and that on the balance of probabilities, the Respondent made the comment recorded in the Minutes

4.5.9 Whilst the Respondent was adamant that she did not intend to, and did not think she could change anyone’s mind she clearly spoke in emotive terms in support of her husband and voted to avoid his referral. She said that her intention was only to defend her husband in the face of what she considered to be entrenched views. Whilst in this particular case, the Case Tribunal considered it unlikely that the Respondent’s presence influenced others, her contribution to the debate could conceivably have persuaded others to temper their views. By voting on the issue, the Case Tribunal considered that this could have influenced and changed the outcome of the vote.

4.5.10 It was noted that the Relevant Authority provided an opportunity for members of the public to speak on issues at Council meetings. There is no available evidence to indicate whether the Respondent was advised or sought advice in this regard. Nevertheless, the Respondent could therefore have spoken in any event by virtue of Paragraph 14(2) of the Code and then left the meeting. However, by acting in the role of Member and in particular by using her right to vote, the Case Tribunal considered that she had attempted to use her position improperly to avoid a disadvantage to her husband.

4.5.11 The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 7(a) and 14(1)(c) of the Code of Conduct.

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

4.6 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*’.

#### **The PSOW’s Submissions**

4.6.1 The PSOW’s submissions as contained in the Report dated 29 November 2022 are that the Respondent’s conduct was suggestive of a breach of paragraph 6(1)(a) of the Code of Conduct for the following reasons.

4.6.2 The PSOW said that caselaw had established that for a breach of this paragraph to be found, ‘*a member’s conduct must impact upon their Council’s reputation and/or the role of the elected member and go beyond affecting their personal reputation.*’ It was the PSOW’s view that the Respondent’s conduct at the relevant meetings, with members of the public and press being present at the meeting of 3 November 2021, as well as the press coverage about it, may have brought her Council and/or her office as a member into disrepute.

4.6.3 The PSOW considered that the Respondent had knowingly disregarded the Code and that this showed a lack of regard for the ethical standards regime in Wales and could in turn affect public confidence in local democracy. The PSOW also considered however that the Respondent's response during the investigation '*demonstrates a lack of appreciation of the duties placed upon her under the Code of Conduct whilst she was acting in her public role.*'

#### The Respondent's Submissions

4.6.4 During her interview, the Respondent said that she didn't think that, during the three years she was a member of the Relevant Council, she had said or done anything to bring the Council or her office into disrepute.

4.6.5 The Respondent said that both she and the presiding Chairman were unaware that a member of the press was present at the meeting of 3 November 2021.

4.6.6 In response to questions, the Respondent said that the press coverage probably had no impact on her office as member of the Relevant Council. She said that she had received no negative correspondence or telephone calls whatsoever. As to any impact on the Relevant Council, she conceded that the press coverage could have brought the council into disrepute, and then qualified this to say "*Well, certainly one member of it.*" By this she meant her husband.

#### Case Tribunal's determination as to alleged breach of paragraph 6(1)(a) of the Code of Conduct.

4.6.7 In considering this matter, the Case Tribunal had regard to the PSOW Guidance for Members of Community and Town Councils in relation to the Code of Conduct. As to paragraph 6(1)(a) it makes it clear that: -

*2.31 ...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, 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'.*

4.6.8 The Guidance then provided a list of case examples where a breach of paragraph 6(1)(a) had been found to have occurred. The Case Tribunal considered that these examples were not comparable to the behaviour of the Respondent in this case. The examples referred to a Councillor who had misrepresented a shop purchase as being on behalf of the Council and then being abusive to staff, a member writing an article in a publication which was aggressive and threatening and where a member was convicted of a criminal conviction for common assault. The Case Tribunal was nevertheless mindful that behaviour at a public meeting could, in some cases, amount to behaviour capable of breaching paragraph 6(1)(a) of the Code of Conduct.

4.6.9 As to the press report submitted in evidence, the Case Tribunal considered that this arose in the context of *'an Audit Wales report which criticised the council for inadequacies in governance, financial management and internal control arrangements.'* The headline however referred specifically to the Respondent's husband as the Chairman during the period upon which the Audit Wales report had focused, being the 2018-2019 financial year. The press report went on to say that Councillors had also agreed to refer the Respondent to the Ombudsman *'but she has since resigned from the authority.'* It went on to state that the Respondent had been reported for attending two council meetings when the audit report was discussed, and she should have declared a personal and prejudicial interest. The Respondent's comments were also reported.

4.6.10 The Case Tribunal considered that the Respondent's actions had arisen in a situation where it is likely that the Relevant Authority had already been brought into disrepute in the light of the critical Audit Wales Report. It was a 64-page document which focused in detail on governance, and financial management and internal control failures of the Council as a whole, whilst also referencing the role of three individuals connected to that Authority, including the former Chairman of the Council. Nevertheless, the Case Tribunal considered that the deliberate conduct of the Respondent on its own, in particular at the meeting of 3 November 2021 was also capable of bringing the Relevant Authority and the role of member into disrepute.

4.6.11 It considered that members of the public should be able to expect their elected members not to participate in proceedings and particularly not to vote on matters which



directly affect their spouses, friends or close personal associates. They would be expected to be acting solely in the public interest and not to benefit their own interests or those of people close to them. Doing otherwise, and deliberately so, would inevitably attract adverse publicity and local press interest and ultimately reduce trust in the role of member.

4.6.12 In conclusion, the Case Tribunal considered that the Respondent had deliberately disregarded the requirements of the Code of Conduct by failing to declare a personal and prejudicial interest at both meetings and continuing to participate in them. It considered that voting on the issue of referral of her husband to the PSOW was a serious breach of the Code. The press also reported the nature of the breach. Whilst it considered that the predominant reasons for press attention of the Relevant Authority was due to the actions of the Council as a whole and of named individuals in the Audit Wales report, the Respondent's disregard of the Code requirements could also reasonably be regarded as bringing the Authority and office into disrepute. The Respondent made it clear that she would have acted in the same way again as her *"husband came first."*

4.6.13 As for the comments made by the Respondent and recorded in the minutes of the meeting of 3 November 2021, the Case Tribunal considered that whilst they were somewhat emotive, they were not egregious in the context of ordinary political debate. It did not consider that these comments in themselves constituted a breach of the Code and noted that the comments were likely to have been made in the heat of the moment.

4.6.14 The Case Tribunal therefore found by unanimous decision that the Respondent had breached Paragraph 6(1)(a) of the Code of Conduct.

## **Article 10 ECHR**

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

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

*2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of...public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others...'*

## **Case Tribunal's consideration as to Article 10 ECHR.**

4.7.1 The Case Tribunal adopted the following three-stage approach formulated in ***Sanders v Kingston [2005] EWHC 1145*** in relation to the allegations of breach of the Code of Conduct. This approach is as follows: - (i) Did the Respondent's conduct

breach the Code of Conduct? (ii) Would the finding in itself comprise of a prima facie breach of Article 10? (iii) If so, would the restriction involved be one which was justified by reason of the requirements of Article 10(2)?

4.7.2 The Case Tribunal had, as above, found that there had been prima facie breaches of the Code of Conduct by the Respondent. It also considered that any prevention of the Respondent from freely expressing her views at meetings would comprise of a prima facie breach of Article 10 as the comments could be categorized as political expression during debate, freedom of expression being regarded as a cornerstone of democracy. Nevertheless, the Case Tribunal was satisfied that the Code's requirements to declare interests and to withdraw from the meeting as appropriate were justified by reason of the requirements of Article 10(2).

4.7.3 Whilst the Code requirements could be deemed to restrict the Respondent's right to freedom of expression and anything which impedes political debate should be exercised with extreme caution, the Code does provide an opportunity to express views in accordance with Paragraph 14(2) or by applying for dispensation and the Respondent did not avail herself of these opportunities.

4.7.4 The Case Tribunal considered that the restrictions provided in the Code were necessary to uphold the public interest in proper standards of conduct by members. Such restrictions were necessary to restrict members from participating in Council business which was to do with relatives or close personal associates. The Case Tribunal was satisfied that the restrictions on acting in certain circumstances, as provided by these Paragraphs of the Code as prescribed by law, were necessary. This was due to the fact that the restrictions upheld the law, protected ethics and morals and the rights of others by ensuring that close personal associates (a husband in this case) did not benefit from a member speaking and voting on a matter.

4.7.5 The Case Tribunal therefore found by unanimous decision that any restrictions provided by the Code of Conduct for Members would have been justified in this case by reason of the requirements of Article 10(2) of the ECHR.

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

5.1 The Listing Directions dated 27 January 2023 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 proceeding was reached.

### The PSOW's Submissions

5.1.1 The Ombudsman wrote in a further letter in February 2023 as follows;

*'As the Tribunal is aware, the purpose of the ethical standards framework is to promote high standards amongst members of councils in Wales and maintain public confidence in local democracy. Whilst we take the view that the nature of any sanction is a matter*

for the Case Tribunal, having considered the facts of the case and the seriousness of the breaches of the Code of Conduct found, we recognise that the purpose of a sanction is to:

- *Provide a disciplinary response to an individual member's breach of the Code.*
- *Place the misconduct and appropriate sanction on public record.*
- *Deter future misconduct on the part of the individual and others.*
- *Promote a culture of compliance across the relevant authorities.*
- *Foster public confidence in local democracy.'*

5.1.2 The PSOW also highlighted from the relevant Sanctions Guidance certain aggravating and mitigating factors which it considered could apply in this case. Finally, the PSOW stated that the Respondent *'has not shown any remorse and indicated that if the same situation arose again, she would repeat the behaviour'* and considered that a sanction of disqualification would be fair, proportionate and in the public interest *'to maintain confidence in local democracy.'*

#### The Respondent's Submissions

5.1.3 In her response to the PSOW's report, the Respondent stated that in the last months, her health had deteriorated, and she provided details of her serious illness. She said *'I therefore will not be participating any further in this investigation. I am finding it very stressful, I have already said everything there is to say on this matter. As my husband was not allowed to defend himself I have no regrets at my actions. At [age details] and with failing health and a system I totally disagree with (giving a voice to the guilty and not to the innocent) and allowing the Welsh Audit Office to persecute a man who has worked his adult life volunteering his time with no pay. The chances of me going on any Community Council is nil. We sat on the Community Council with no pay to work for our community and have suffered three years of persecution for it. As I said I will not be taking any further part in this investigation. The Adjudication Panel must make their decision and let me know the outcome.'*

5.1.4 She also said *'the people I'm most disgusted with, are the Welsh Audit Office, because I understood that they were supposed to..., make sure that the council, eight people are doing what they should be doing. But they singled [name] out, they made an attack, a frontal attack on one person, not eight. And I think that that was done on purpose, for some reason, which I don't know anything about. But they made a frontal attack. Now there were eight people on that council at the time, eight people responsible for what was wrong or right, not one, eight.'*

5.1.5 During interview, the Respondent expressed her only regret as not having put the case in favour of her husband in a more effective way. As to the Code, she also said *"I was fully aware...and ... I knew there'd be consequences..., I'm not bothered about that at all, I wanted to be there for him."* Finally, she said *"Can I just say though, it was very*

*interesting, that I sat through the April one without anybody saying anything, and it wasn't until I spoke out in [name]'s defence in the November one, that Council allowed ... decided I shouldn't be there."*

### **Case Tribunal's determination as to Sanction.**

5.1.6 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.'*

5.1.7 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.

5.1.8 The Case Tribunal noted the Respondent's arguments that there had been individuals who had moved to destroy her husband and that the issue was to do with grant funding having been diverted to community projects from the Community Hall, to which the individuals were connected. She said it was they who had been in touch with Audit Wales and had reported her husband. She considered this to be unfair and did not provide him with an opportunity to give his side of the story.

5.1.9 Regardless of any difficult background issues however, the Case Tribunal considered that the breach was serious in certain respects, particularly in relation to the question of voting on whether to refer her husband to the PSOW. As such, it considered that the case was one which would normally attract disqualification or suspension for a significant number of months. In the circumstances, and in view of the serious nature of the breach, the Case Tribunal considered that it had no option other than to impose a period of disqualification.

### **Aggravating factors**

5.1.10 The Case Tribunal went on to consider any aggravating factors in this case. It concluded that the following factors applied and that the Respondent: -

- was engaged in deliberate conduct and use of office/a position of trust to attempt to avoid a disadvantage for her husband;
- had breached the Code at two meetings and the Respondent's behaviour had therefore been repeated.
- had chosen not to attend training on the Code;

- had engaged in conduct with little or no concern for the Code;
- had ignored advice given by the Clerk regarding the Code at both meetings even though the Respondent accepted that the Clerk wanted her to declare an interest, and she had also chosen not to attend any Code training.

### Mitigating Factors

5.1.11 The Case Tribunal also considered mitigating factors in this case. It concluded that the following factors applied, that the Respondent: -

- had a relatively short period of service and inexperience in the role;
- had a previous record of good service;
- had co-operated with the investigation officer.

5.1.12 In addition to these mitigating factors highlighted from the Sanctions Guidance, the Case Tribunal considered the Respondent's responses during PSOW interview had been honest and straightforward. The Case Tribunal accepted the Respondent's evidence of her serious health condition in the absence of medical evidence and gave credit to the fact that the Respondent had not sought to use her health condition to excuse any failure to adhere to the Code, nor did she seek to blame others for this failure.

5.1.13 The Case Tribunal also noted the Respondent's position that there were entrenched views within the Relevant Authority and that she had been seeking to put forward an alternative view. Nevertheless, the Case Tribunal noted that there were other members who could have put forward an alternative view and that there were procedures in place which could have enabled her to speak, to include the procedure in Paragraph 14(2) of the Code as well as the right to apply to the Relevant Authority's Standards Committee.

5.1.14 In view of the Respondent's resignation the day after the meeting of November 2021, the sanction of suspension was clearly not a sanction available to the PSOW. As to former members, Paragraph 47 of the Guidance states '*In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate... This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected...*'

5.1.15 The Case Tribunal accepted that the Respondent had no intention of returning to member duties, nevertheless the Case Tribunal noted that sanctions had other overarching purposes. They not only provided a disciplinary response to an individual member's breach of the Code, but they were also to deter future misconduct by others and promote a culture of compliance across authorities generally. It considered there to

be a requirement to reinforce the importance of the Code as well as the principles of selflessness, propriety and objectivity in decision-making.

5.1.16 In the circumstances, the Case Tribunal considered whether *'No Action'* or *'Disqualification'* as detailed in the Sanctions Guidance was an appropriate outcome. It noted Paragraphs 39.1 and 39.2 of the Guidance in particular, which recognized that no action may be appropriate where there had been a resignation or ill health which rendered a sanction unnecessary and/or disproportionate.

5.1.17. In view of the Respondent's prompt resignation following the events of 3 November 2021, her candid responses during interview and her accepted ill-health, this was a finely balanced decision. The Case Tribunal also considered Article 10 in the context of imposing sanctions. Being mindful of the public interest however and the need to uphold the law, ethics and morals and to protect the rights of others in a democratic society, the Case Tribunal was satisfied that a finding of *'No Action'* would not be appropriate in this case. There was an expectation that members would act with integrity, act in accordance with the trust that the public placed in them, lead by example, and promote public confidence by acting in the public and not private interest. The Respondent had not done so.

5.1.18 In all the circumstances therefore and bearing in mind the Respondent's disregard of the Code and absence of regret for her actions, as well as the wider purpose of sanctions as outlined in the Guidance, it considered that the sanction of disqualification was appropriate. It considered that this was necessary to underline the importance of the Code and the need for members to reflect upon its purpose when undertaking to abide by the Code on taking office. It considered that disqualification for a period was a proportionate and necessary sanction in this case.

5.5.19 The Case Tribunal therefore found by unanimous decision that the Respondent should be **disqualified for 12 months** from being or becoming a member of the Relevant Authority or any other relevant authority within the meaning of the Local Government Act 2000.

5.5.20 St. Harmon Community Council and its Standards Committee are notified accordingly.

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

Signed..... **Date**; 31 March 2021

C Jones  
Chairperson of the Case Tribunal

Mr D Morris

Panel Member

Mr H E Jones

Panel Member

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## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**25 APRIL 2023**

#### **ADJUDICATION PANEL FOR WALES' ANNUAL REPORT 2021-2022**

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

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

To provide for Members' information a copy of the Adjudication Panel for Wales' Annual Report 2021-2022.

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

2.1 To note the contents of the Adjudication Panel for Wales' Annual Report 2021-2022 contained at Appendix 1 to the report.

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

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

3.2 Its latest published Annual Report for 2021-2022 is provided for Members' information at Appendix 1.

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

**LOCAL GOVERNMENT ACT 1972**  
**AS AMENDED BY**  
**THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**  
**STANDARDS COMMITTEE**  
**25 APRIL 2023**  
**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

**Freestanding Matter**

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



# Adjudication Panel for Wales Annual Report

Year 2021 – 2022

PDC / APW

PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES

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# Foreword

This is my seventh report as President of the Adjudication Panel for Wales. The report covers the period 1 April 2021 – 31 March 2022.

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

This financial year has seen the APW deal with an unusually high number of cases. It is not clear whether this is connected to the impact of the COVID-19 pandemic, the election cycle or simply a natural fluctuation. There is no common theme to be drawn from the cases heard. This year has seen all types of councillors appearing before the APW, ranging from leaders of councils to members of community councils. Given the new duties imposed on leaders of parties in local government concerning standards in public life, it is to be expected that matters will improve. I remain of the view that a good year for standards is when the APW is quiet.

At the time of writing this foreword, the 2022 local government elections have just taken place. Whilst congratulating those who have been elected to their important public service role, I also encourage councillors to take advantage of the Code of Conduct training they will be offered by monitoring officers and others and to review the guidance issued by the Public Services Ombudsman for Wales. Such training is designed to help and support councillors to carry out their work for their community in accordance with the Code and to avoid ever having to appear before either the standards committee or the APW.

Finally, I note the recommendations of the Penn review and its proposals for changes to the APW's powers and procedures. I look forward to working with the Welsh Government as it considers its position in relation to the report it commissioned and its implementation. I am conscious that the Welsh Tribunals as a whole face a time of significant change, following the Law Commission report on Welsh justice, but am confident the APW will continue to deliver fair decisions to ensure compliance with the Code while protecting the enhanced freedom of expression for those engaged with politics.

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

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

# Section 1 – About Us

In this section:

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

## Basis for the APW

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

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

## The APW's Function

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

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

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

## The APW's Regulations

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

APW's procedures are governed by the following legislation:

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

## The APW's Process

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

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

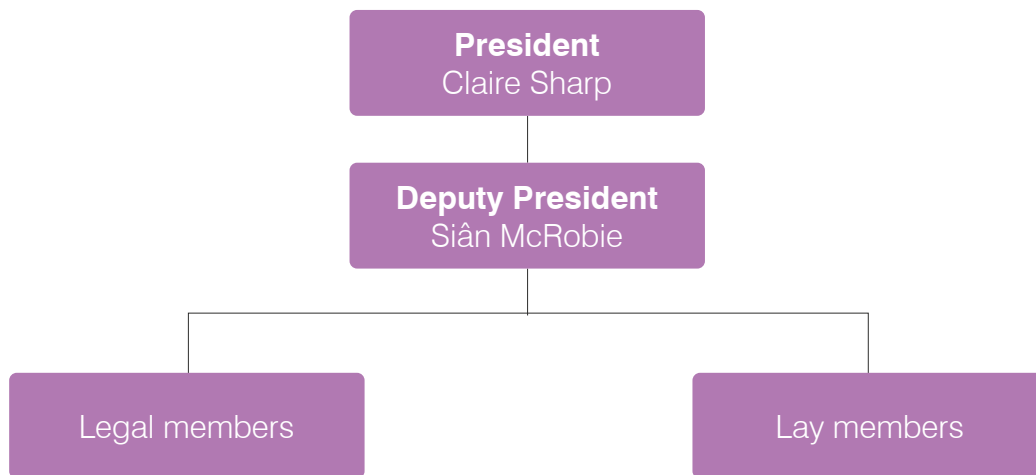
The APW publishes its decisions on the website for the APW. Decisions of Case Tribunals can be appealed on limited grounds to the High Court. Permission to appeal to the High Court must first be sought from the High Court.

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

## Members of the APW

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

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



## Appointments

During this period, we have appointed 1 new lay member.

## Training

A training seminar was held on **5 May 2021**, with a continued emphasis on judgecraft; together with case law updates and a session on credibility of witnesses and fact-finding.

## Contacting the APW

To contact the APW Administration:

APW Address: Registrar to the Panel  
Adjudication Panel for Wales  
Welsh Tribunals Unit  
PO BOX 100  
Llandrindod Wells  
LD1 9BW

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



## Accessing the APW

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

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

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

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

## Section 2 – Performance and Progress

In this section:

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

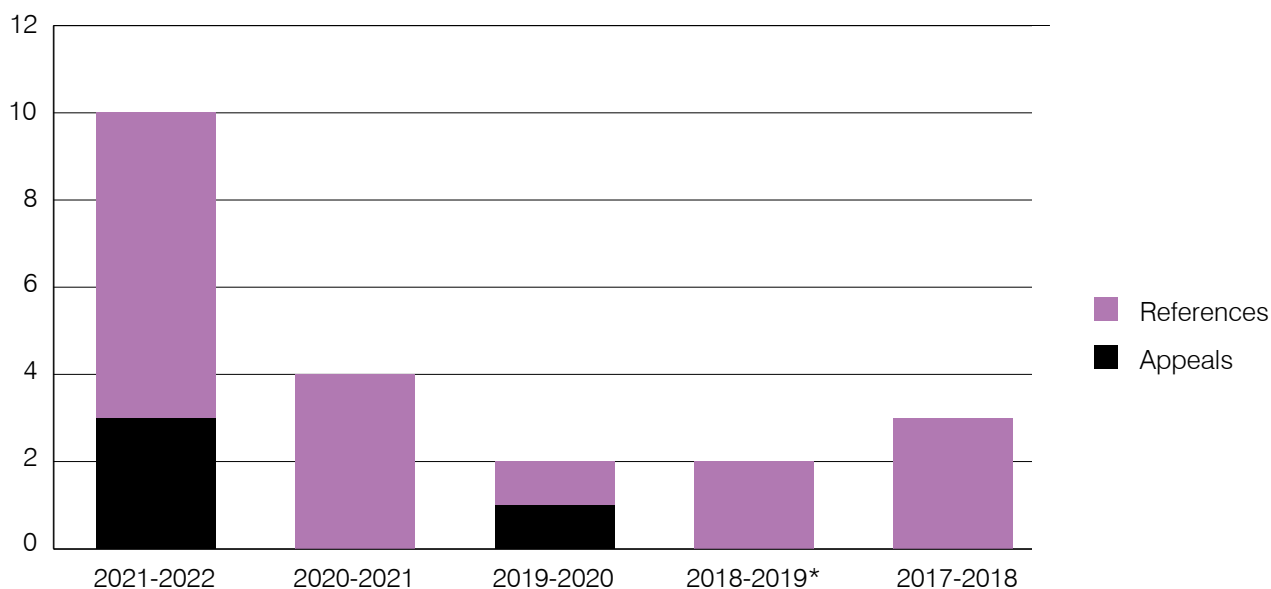
### Numbers and Statistics

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

The following statistics are collated:

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

Graph 2.1: Number of references and appeals received by year April 2017-March 2022



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

Graph 2.2: Number of references and appeals decided by year April 2017-March 2022

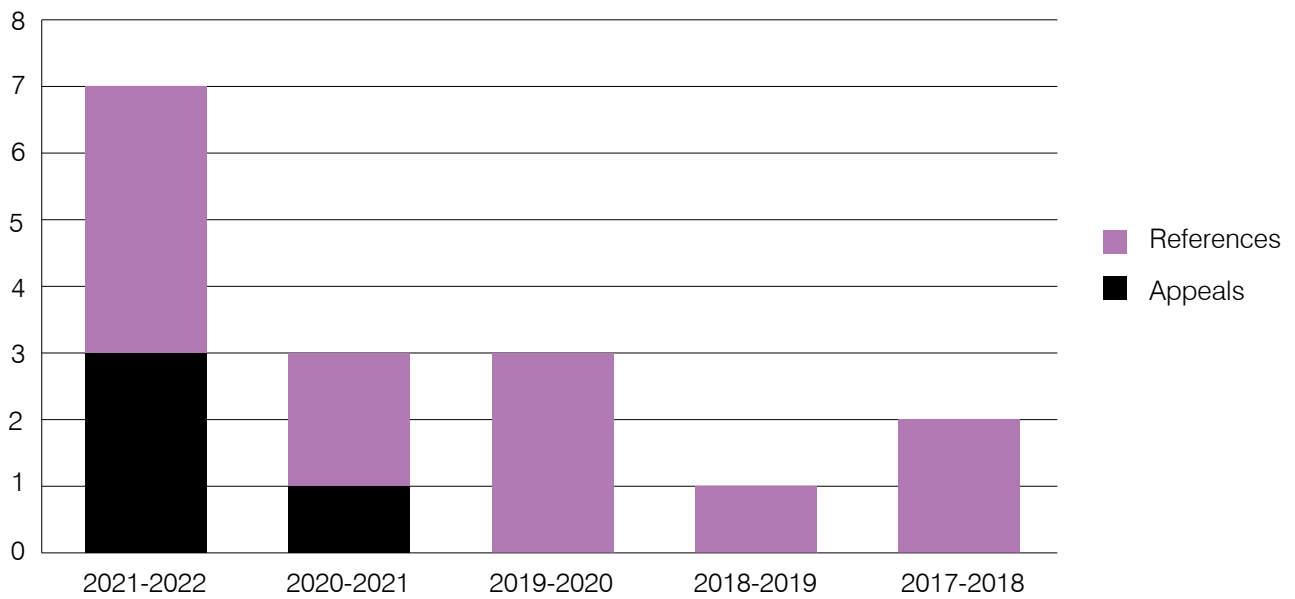
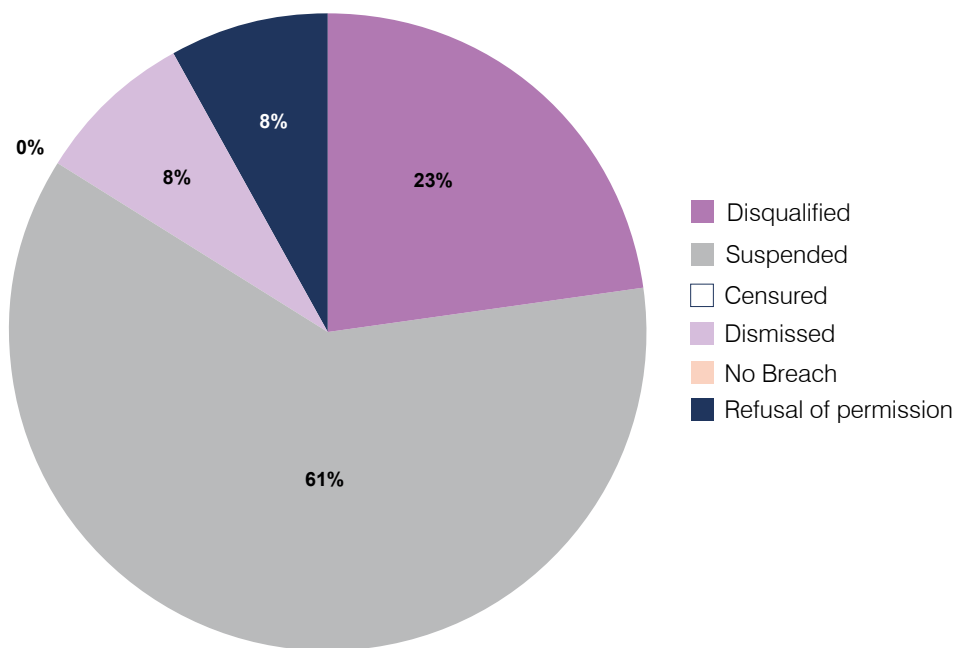
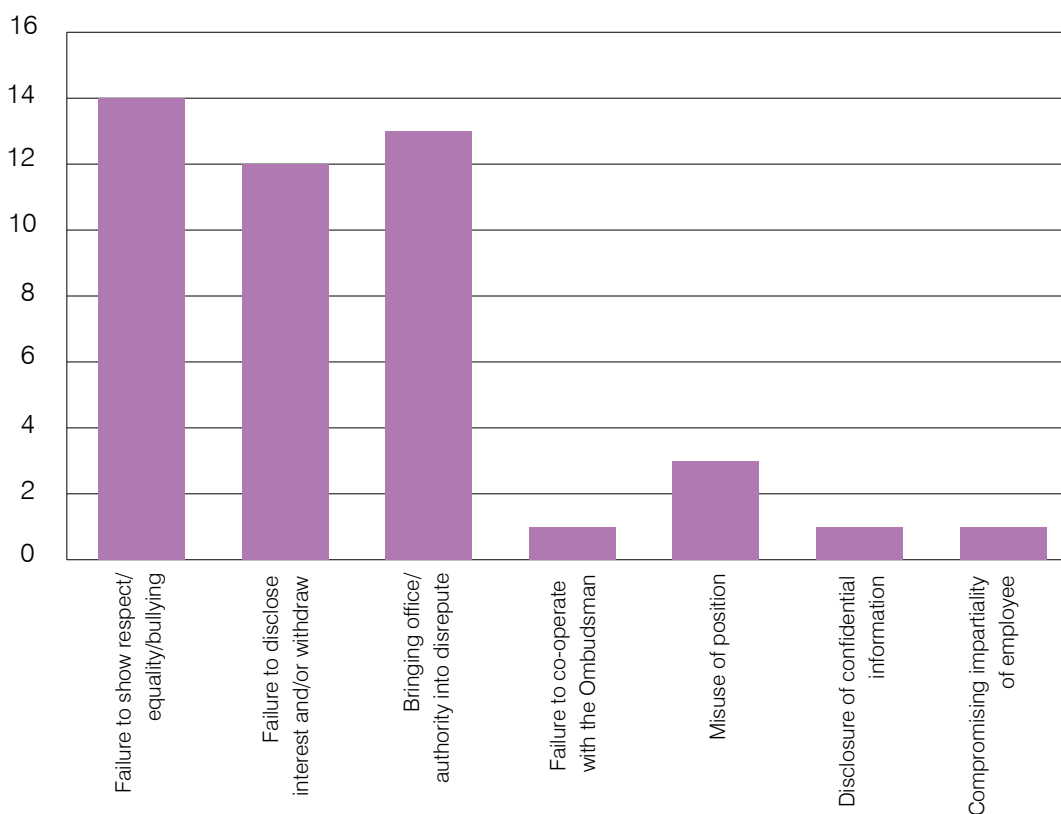


Chart 2.3: Outcomes of references and appeals April 2017- March 2022

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



Graph 2.4: Breaches by type April 2017-March 2022



### Hearings data

During 2021-2022:

Type	Length (in days)
Reference	8 hearing days
Appeal	2 hearing day

6 listing conferences took place in relation to these cases.

### Onward appeals

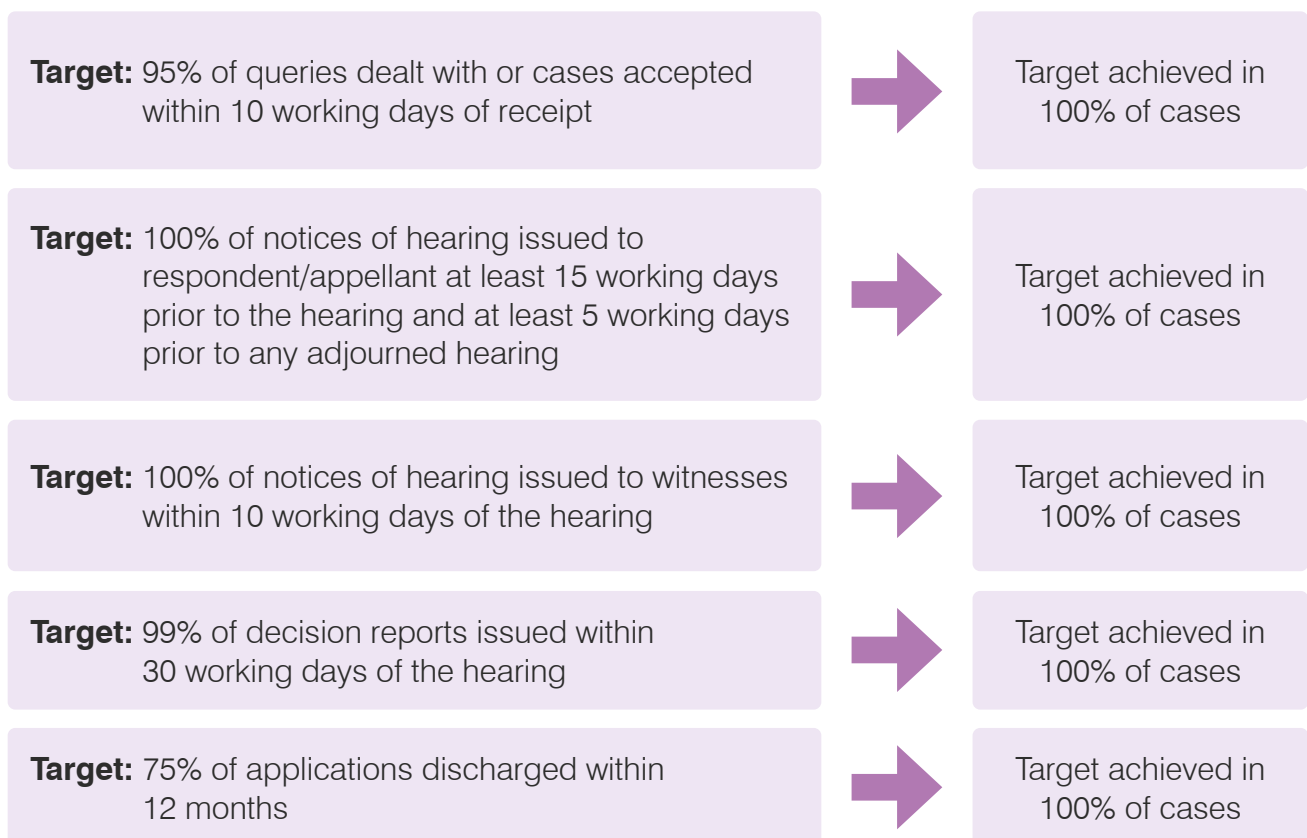
Applications for permission to appeal a decision of a Case Tribunal or Interim Case Tribunal can be made on limited grounds to the High Court. Over the period of this report, no applications for permission were made.

## Achievement against key performance indicators

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

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

### Speed of our service 2021-2022



## Complaints

The APW received and concluded 1 formal complaint during the reporting period.

## Section 3 – Case summaries

In this section:

- References
- Appeals

### References

During the reporting period, **4 case tribunals** took place resulting from a reference from the Ombudsman. A summary of the cases determined by the APW appears below:

APW/003/2020-021/CT

Caerphilly County Borough Council

The allegations were that the councillor had breached the Code of Conduct for Caerphilly County Borough Council by conducting himself in a manner reasonably regarded as bringing the office or authority into disrepute, using his position to secure an advantage, failing to disclose a personal interest in council business when attending a meeting or making written representations, and failing to withdraw from a meeting in respect of a matter in which he had a prejudicial interest (without obtaining a dispensation).

The councillor was Leader of the Council. In that role, he attended meetings of a City Deal Regional Cabinet, a joint working arrangement between 10 Councils. The councillor was also a director of an investment vehicle company. Having seen a confidential report, the councillor invested personally in a company affected by the contents of that report. When the councillor attempted to amend his register of interests a few months later to reflect his investment, he was advised by a senior officer this was not necessary; he then did not declare his interest at a later City Deal meeting, but did so on further occasions and left those meetings.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct for Caerphilly County Borough Council as follows:

- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a));
- Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent (paragraph 11(1));
- Where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's standards committee – (a) withdraw from the room, chamber or place where a meeting considering business is being held..."(paragraph 14(1)(a)).

The Case Tribunal unanimously concluded that the councillor was to be suspended from acting as a member of a relevant authority in respect of his breaches of paragraphs 6 and 7 of the Code for a period of five months and in respect of his breaches of paragraphs 11 and 14 of the code a period of two months concurrently. In addition, it recommended that the Monitoring Officer re-emphasised the requirement for members to register interests as/when they arise and that the duty does not arise annually.

APW/001/2021-022/CT

Taff's Well and Nantgarw Community Council, Rhondda Cynon Taf County Borough Council

The allegations were that the councillor had breached the Code of Conduct for Taff's Well and Nantgarw Community Council by bullying or harassing others, by failing to show respect and consideration for others, conducting himself in a manner reasonably regarded as bringing the office or authority into disrepute, using his position to secure an advantage, and failing to observe the law and the authority's rules governing the claiming of expenses and allowances.

The councillor was a member of a community council and required additional support to carry out his role due to his disabilities. He sought payment of expenses that he said were required to enable him to carry out his role, but the clerk to the Council refused the applications on the basis that she was not satisfied with the evidence provided. This led to a series of emails in which the councillor questioned the clerk's qualifications, doubted the justification for her salary, demeaned the work that she undertook and ultimately referred to her as part of an **"axis of evil"** that was bullying him. When the Chair became involved, the councillor sent abusive emails to him. During the PSOW's investigation, the councillor interfered with the evidence of a witness and wrote a letter (ostensibly from the witness) seeking to resile from the evidence given to the ombudsman.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct as follows:

- You must show respect and consideration for others (paragraph 4(b));
- You must not use bullying behaviour or harass any person (paragraph 4c);
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a));
- You must (a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a member (paragraph 9(a)).

The Case Tribunal unanimously concluded that the councillor was to be disqualified from acting as a member of a relevant authority for a period of 12 months.

APW/005/2021-022/CT

Abertillery and Llanhillieth Community Council, Blaenau Gwent County Borough Council

The allegations were that the councillor had breached the Code of Conduct for Abertillery and Llanhillieth Community Council by failing to carry out his duties with due regard to equality of opportunity for all, by bullying or harassing others, by failing to show respect and consideration for others, conducting himself in a manner reasonably regarded as bringing the office or authority into disrepute, and by failing to comply with the requests of the PSOW during his investigation.

The councillor was a member of a community council, as was another councillor who had a hearing impairment. The accused councillor was overtly rude to his colleague about her disability on more than one occasion and tried to make it hard for her to participate in meetings. In addition, during the PSOW's investigation the accused councillor was found to have failed to engage or co-operate with the investigation (including failing to answer written questions) and this was not due to his health as asserted.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct as follows:

- You must carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion (paragraph 4(a));
- You must show respect and consideration for others (paragraph 4(b));
- You must not use bullying behaviour or harass any person (paragraph 4c);
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));
- You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers (paragraph 6(2)).

The Case Tribunal unanimously concluded that the councillor was to be suspended for a period of ten months from acting as a member of a relevant authority. It further recommended that the accused councillor undertook further training on the Code of Conduct and Equality and Diversity, and provided a full written apology to his colleague in respect of his breaches of the Code towards her.

[APW/006/2021-022/CT](#)

[Caernarfon Royal Town Council and Gwynedd Council](#)

The allegations were that the councillor had breached the Code of Conduct for Caernarfon Royal Town Council and Gwynedd Council by bullying or harassing others, by failing to show respect and consideration for others, conducting himself in a manner reasonably regarded as bringing the office or authority into disrepute, using his position to secure an advantage, and failing to co-operate with the PSOW's investigation.

The councillor was unhappy about the activities of a colleague during the COVID-19 pandemic. He posted comments on Facebook to denigrate him and to suggest his parents received free meals, was found to have assaulted a third party when that individual was out leafletting with the other councillor, and repeatedly threatened and claimed to have issued court proceedings for compensation and/or injunctive relief and/or a harassment complaint with the Police against the councillor to whom he objected. During the PSOW's investigation, the councillor was found to have failed to engage. While the accused councillor asserted that he was unwell, no medical evidence was provided either to the APW or the PSOW.

The Case Tribunal found by unanimous decision that the councillor had failed to comply with the Code of Conduct as follows:

- You must show respect and consideration for others (paragraph 4(b));
- You must not use bullying behaviour or harass any person (paragraph 4c);
- You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 6(1)(a));



- You must comply with any request of your authority's monitoring officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers (paragraph 6(2));
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a)).

The Case Tribunal unanimously concluded that the councillor was to be suspended from acting as a member of a relevant authority for a period of nine months.

## Appeals

During the reporting period, 2 appeal tribunals took place arising from a decision made by a local government standards committee. In addition, permission to appeal was refused by the President in respect of one appeal.

A summary of the cases determined by the APW appears below:

### APW/002/2021-022/AT Denbighshire County Council

An appeal was received against the determination of the standards committee that the councillor had breached Denbighshire County Council's Code of Conduct and should be suspended from office for 2 months.

The proceedings arose from the councillor's decision to become involved in a personal dispute between a constituent and another individual in a car park. The councillor decided to investigate and attempt to view the CCTV, and visited the individual's workplace and spoke to her colleagues about the matter. He later wrote a letter of complaint to the individual's employer about the incident in the car park.

The standards committee found that the councillor had breached the Code of Conduct in respect of the following paragraphs:

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

Permission to appeal was given by the President only in respect of the issue as to whether the actions of the councillor constituted harassment and whether the sanction imposed should be reviewed. The Appeal Tribunal by unanimous decision found that the actions of the councillor did constitute a course of harassment, that this was a breach of the Code, and endorsed the two month suspension sanction imposed by the standards committee.

An appeal was received against the determination of the standards committee that the councillor had breached Wrexham Council's Code of Conduct and should be suspended from office for three months.

The proceedings arose from the councillor's decision to complain about a member of a public to her employer (and copied into the relevant regulator) because she had complained about him to the PSOW.

The standards committee found that the councillor had breached the Code of Conduct in respect of the following paragraphs:

- You must show respect and consideration for others (paragraph 4(b));
- You must not use bullying behaviour or harass any person (paragraph 4c);
- You must not in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage (paragraph 7(a)).

Permission to appeal was given by the President as whether the sanction imposed should be reviewed; the councillor in part relied upon the two-month suspension given by Denbighshire County Council's standards committee for similar conduct. The Appeal Tribunal by unanimous decision found that the sanction should be reviewed and recommended that a two-month suspension should be considered by the standards committee. On referral back to the standards committee, it declined to change the sanction and the suspension of three months came into effect.

## Section 4 – Business Priorities

In this section:

- Business priorities for 2022-2023

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

### Business Priorities 2022-2023

- Plan and deliver an all-members training event;
- Continue to deliver an effective and efficient service, meeting key performance indicators;
- Pandemic permitting, return as appropriate to “face to face” hearings and attend key outreach events;
- Following the outcome of the Law Commission report on Welsh tribunals and the review of the Ethical Framework, action any changes as required by the legislature.

## Section 5 – Expenditure

In this section:

- Expenditure for 2021-2022

### Expenditure for 2021-2022

Content	Amount
Members Fees and Expenses (proceedings and training)	£41,370
Tribunal events (hearing and other costs)	£7,780
<b>Total</b>	<b>£49,151</b>

Rounded to the nearest £1



## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**25 APRIL 2023**

### **NATIONAL STANDARDS FORUM - FEEDBACK FROM MEETING HELD ON 27<sup>TH</sup> JANUARY 2023**

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

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

To provide Members with feedback from the inaugural meeting of the National Standards Forum held on 27<sup>th</sup> January 2023.

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

- 2.1 To note the feedback from the inaugural meeting of the National Standards Forum held on 27<sup>th</sup> January 2023.
- 2.2 To consider whether there are any items the Committees wishes to put forward as suggestions for consideration by the National Standards Forum at its future meetings.

##### **3. BACKGROUND AND INAUGURAL NATIONAL FORUM MEETING**

- 3.1 As reported to the Committee [at its last meeting](#) a National Forum for Standards Committee Chairs and Vice-Chairs has been established. The terms of reference for the Forum are attached at Appendix 1. By sharing best practice it is anticipated the Forum will help to raise standards across all authorities in Wales.
- 3.2 The first meeting of the Forum took place on 27<sup>th</sup> January 2023. The agenda for the meeting is attached at Appendix 2.
- 3.3 At that meeting the Forum appointed a Chair (the Chair of the Standards Committee for Conwy County Borough Council) and a Vice Chair (The Chair of the Standards Committee for Cardiff City Council). Each will serve 2 years.
- 3.4 In addition, the forum accepted an offer of monitoring officer support from Cardiff City Council. That person will advise the Chair and help to prepare reports that

require legal input.

- 3.5 Feedback and actions arising from the meeting can be found attached at Appendix 3. The Forum considered the duty on group leaders to promote ethical behaviour amongst the members of their group and listened to existing practice from amongst the members. Although practice varies slightly across authorities there was no significant deviation from the practice adopted at RCT (as agreed and reported at the last Standards Committee meeting.
- 3.6 The Public Services Ombudsman for Wales, Michelle Morris, also gave a presentation. The notes/slides of her presentation are attached at Appendix 4.
- 3.7 The next meeting of the forum will be at the end of June. The agenda for that meeting will be set at the June meeting of the Monitoring Officers' Group. Does the Committee have any suggestions for items it would wish to see considered by the Forum at any of its future meetings?

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

- 4.1 The support for the Forum will be provided by the WLGA and voluntarily by monitoring officers within the constituent local authorities.

#### **5. CONSULTATION IMPLICATIONS**

- 5.1 None required.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**STANDARDS COMMITTEE**

**25 APRIL 2023**

**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

**[NATIONAL FORUM FOR STANDARDS COMMITTEE CHAIRS – DRAFT TERMS OF REFERENCE – 18 NOVEMBER 2022](#)**

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

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## **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*

Tudalen wag

# National Forum for Standards Committees

Via Zoom

14:00-16:00

Friday, 27<sup>th</sup> January 2023

## Agenda

1. Election of Chair
2. Election of Vice-Chair
3. Role and Terms of Reference
4. Update on the Penn Report
5. Discussion on implementation of the new duty on group leaders and how this will be reported as part of the Standards Committee annual report
6. Guest Speaker: Michelle Morris, Public Services Ombudsman for Wales
7. AOB:
  - a) Members Annual Reports
  - b) Chairing Skills for Chairs and Vice Chairs of Standards Committees

Tudalen wag

## **National Standards Forum Committee**

**Friday, 27<sup>th</sup> January 2022**

### **1. Election of Chair**

- Clive Wolfendale elected as Chair.

### **2. Election of Vice Chair**

- Jason Bartlett elected as Vice Chair.

### **3. Role and Terms of Reference**

- The forum consists of all local government organisations in Wales. There will be 4 MO's at any one meeting from principle councils, 1 MO from Fire and 1 from NPAs – these have been taken from the CJC regions.
- Secretariat by WLGA.
- Frequency of meetings 2 per year.
- MOs will suggest agenda items at Lawyers in Local Government meetings.
- The forum is essentially a voluntary members association, any work undertaken by MOs will be done on a voluntary basis. The forum may benefit from having a dedicated MO resource.
- Cardiff deputy MO will be able to support the forum if needed.

### **Comments**

- The idea of having a MO is sensible, Chair of BBNPA Pam Hibbard supports this decision.
- Point of clarification – on the occasion when a Chair is not available to attend a meeting, can a Vice Chair stand in as substitute?
  - Yes, Vice Chair is welcome as a sub.

**ACTION: Secretariat to circulate the ToR.**

### **4. Discussion on implementation of the new duty on Group Leaders and how this will be reported as part of the Standards Committee Annual Report**

- The new duty was introduced under LG & Elections Wales Act 2021, came into effect in May 2022. Will impact at the end of this municipal year when preparing the Annual Report. There has been statutory guidance produced by WG, expectations on Group Leaders to promote standards rather than be responsible.

**ACTION: Secretariat to circulate Annual Report pro-forma**

## Comments

- Standards committee met with Group Leaders in Newport before Christmas. Issued the stencil to the Group Leaders, will be going through the document with the Leaders individually at the next Standards Committee meeting.
- MTCBC have had the introductory meeting with Group Leaders, a very positive meeting. Agreed on regular meetings with Group Leaders for continuity. Have been invited to the next Council meeting to give an update.
- Duty in the Act is new, in Swansea there has been a similar process for a number of years. Have been meeting with Group Leaders on a formal basis. In discussions about meeting informally with the Group Leaders to see if that will bring out any other issues which can be raised informally.
- WLGA have received requests from Councils around providing group leader support/training around the new duty. Can be organised online or in person.

### **ACTION: WLGA to circulate training offers.**

- Pembrokeshire Standards Committee Chair and Vice Chair are planning on meeting with Group Leaders. 35 independent Councillors in Pembrokeshire, 22 consider themselves to be their own groups, with 13 identifying as one group. Will have to ask each individual for their own report.

### **ACTION: WLGA to give thought to how communication is made via Chairs.**

- Ethical Liaison meetings in Flintshire – a few councils have said they are doing something similar.
- Denbighshire have adopted a similar system to Flintshire, have had a useful meeting with Group Leaders, helped and amended the template.

## **5. Guest Speaker: Michelle Morris, Public Service Ombudsman for Wales**

- Investigating complaints that service users and members of the public make, also a key role in driving improvement in public services in Wales and ethical standards in public life.
- In terms of current work – April 21-March 22 was a busy year, more complaints than in the last decade, just under 300 complaints, 240 complaints were not taken forward to investigations.
- A lot of breaches are about lack of respect for others, about behaviours, over 50% of the complaints.
- Helpful for the forum to be a sounding board for advice and guidance.

## Comments

- Ovw have not had additional funding to help support Town and Community Councils, is there something that this forum can do?
- Ceredigion did undergo some training, detailed process.

- Quarterly reports have been changed into a search engine, the reports were very useful to analyse trends across Wales, will you revert to the reports or upgrade the search engine?
  - Useful feedback, planning to do some work on the website and how information is provided.

#### **6. Penn Report, Lisa James, Welsh Government**

- The Minister has not made any further announcements or decisions since thanking Richard for the report.
- The next stage will be a 12 week consultation seeking views on the recommendations of the report. Some things have moved on like the publication of Members addresses which was resolved prior to the elections.
- In terms of membership of Standards Committees, ban on those who have been a Member of a Council or an employee of the Council – worth asking questions around this again.
- Powers of standards committees to summon witnesses.

#### **Comments**

- Have started to implement things from the Penn Report.

#### **7. AOB**

- Members Annual Reports – it is not a statutory requirement to do them but encourage Members to do so in Anglesey. What is the practice for other Standards Committees across Wales?

#### **ACTION: Secretariat to establish baseline figures for 2021/22 Councillor Annual Reports via the Heads of Democratic Services Network**

- Chairing Skills for Chairs and Vice Chairs of Standards Committees.

#### **ACTION: WLGA to work with Chair and Vice Chair to develop training for Chairs of Standards Committees**

#### **ACTION: Secretariat to scheduled next meeting for late June / early July**

Tudalen wag



## Presentation Notes – National Standards Forum

### Introduction

- Introduce Ombudsman
- Powers of PSOW set out in Local Government Act 2000 - Ethical Standards in Public Life (c.750 bodies in jurisdiction);
- Welcome est. of National Standards Forum – important forum to promoting the highest standards of conduct;

### Overview of PSOWs Current Work

- Figures for 2021/22
  - **294 Complaints (Split PC123/TCC 171)** (at this point last year it was 219 PC 85/TCC 129)
  - **No. closed at Assessment 241** (av 20.1pm)
  - **No. Investigations closed last year was 39** (23 at this point in the year)
  - **Referrals to SC/APW last year – 20 Referrals**
- Figures for current year 2022/23
  - **No. Complaints to date 219** (Split PC - 91/TCC - 126)
  - **No. closed at Assessment – 197** (av 22 pm + 6%)
  - **No. Investigations open is 62** (closed 22 compared with 23 at this point last year)
  - **No. Referrals to SC/APW – 5 to date (Likely to be 9 at end of year)**

**Our Performance – good early in process but only 7/10 investigations concluded within 12 months.**

### Key themes

- Breaches due to lack of equality and respect – behaviours towards others (>50%)
- Lack of understanding between public and private role
- Inappropriate use of email and social media
- Lack of CoC training and strong correlation with Breaches
- PSOW work alongside Audit Wales – link between multiple complaints and governance issues = dysfunctional councils

20/01/23

**PSOW has a role to be proactive in promoting highest standards of conduct.**

#### **Working with NSCF**

- **Sounding Board**
- **Sharing data and intelligence** e.g. Annual Letters, SC Annual Reports;
- **Sharing and Promoting Good Practice** e.g. model procedure for agreeing arrangements with the parties (PSOW & the Cllr/their representative);
- **[Joint] Early Intervention** – to prevent escalation e.g. training (low level issues)
- **Promotion of Code of Conduct training** for all Members and reporting on compliance



## **RHONDDA CYNON TAF**

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

#### **STANDARDS COMMITTEE**

**25 APRIL 2023**

### **CONSULTATION ON THE RECOMMENDATIONS OF THE INDEPENDENT REVIEW OF THE ETHICAL STANDARDS FRAMEWORK (RICHARD PENN REPORT)**

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

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

To advise Members of the consultation initiated by Welsh Government in respect of the recommendations of the independent review of the Ethical Standards Framework in Wales (Richard Penn report).

#### **2. RECOMMENDATION**

It is recommended that the Committee:

- 2.1 Considers the Welsh Government consultation launched in respect of recommendations emanating from the independent review of the Ethical Standards Framework in Wales (Richard Penn report); and
- 2.2 Provides their feedback in respect of the consultation in order for a response to be submitted to Welsh Government in advance of the consultation closing date of 23<sup>rd</sup> June 2023.

#### **3. BACKGROUND**

- 3.1 In March 2021, the then Minister for Housing and Local Government commissioned an independent Review of the Ethical Standards Framework (“the Framework”) for local government in Wales established by the Local Government Act 2000 (“the 2000 Act”). An overview of the Framework is attached at Appendix 1. The Framework extends to county and county borough councils, corporate joint committees, national park authorities, fire and rescue authorities and community and town councils. Key components of the Framework include the statutory Members’ Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members

and co-opted Members of the authority. The Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'). These are included in the Conduct of Members (Principles) (Wales) Order 2001. Further, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 ("Model Code of Conduct") provides for a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests.

- 3.2 The Framework has remained largely unchanged over the last 20 years, so an independent review was felt important to maintain confidence in the system and ensure developments in the way councillors and their public lives are reflected in its operation.
- 3.3 An effective ethical framework is essential to ensure people and councillors from all backgrounds have confidence to engage with local democracy or stand for elected office. It is part of making Wales a diverse and inclusive nation and its review is an action in Welsh Government's Anti-racist Wales Action Plan.
- 3.4 In addition, it is essential the Framework reflects significant legislation made since its establishment, in particular the Equality Act 2010, the Well-being of Future Generations (Wales) Act 2015 and the Local Government and Elections (Wales) Act 2021 ("the 2021 Act"). The 2021 Act introduced several measures intended to complement the existing Framework. Firstly, it placed a new duty on leaders of political groups to take reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the Council's Standards Committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a standards committee has new functions under the above 2021 Act to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties. Secondly, after the end of each financial year, standards committees will be required to make an annual report to the Council describing how the committee's functions have been discharged and setting out an overview of conduct matters within the Council. The Council will be obliged to consider the report and any recommendations within 3 months of receipt.

#### **4. INDEPENDENT REVIEW OF THE ETHICAL FRAMEWORK IN WALES**

- 4.1 An independent review of the Framework was undertaken by Richard Penn between April and July 2021 to assess whether the Framework remains fit for purpose. The review took into account the new legislative requirements set out in the 2021 Act and the current equality and diversity policy context.
- 4.2 The terms of reference of the review were to undertake a review of the whole framework to include:

- an audit of the Codes of Conduct adopted by authorities;
  - an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
  - whether the framework is still fit for purpose;
  - the role of Standards Committees;
  - an analysis of the arrangements and protocols in place to support members and staff; and
  - consideration of the current sanctions and whether they are still appropriate.
- 4.3 The [final report](#) was published on 14<sup>th</sup> October 2022 and concluded that the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct. The findings fell into categories based on whether they would need legislation to implement. Some recommendations need primary legislation (e.g. granting the Adjudication Panel for Wales the power to restrict reporting on sensitive cases), others require secondary legislation (such as updating the code of conduct itself) and some are matters of practice that can be implemented if the relevant parties are willing to do so. A summary of the key findings, previously reported to the Committee can be found [here](#).

## **5. WELSH GOVERNMENT CONSULTATION**

- 5.1 Since the publication of the Review Welsh Government engaged with stakeholders including monitoring officers, the Public Services Ombudsman for Wales (PSOW) and her office, the Welsh Local Government Association (WLGA) and One Voice Wales. They also listened to the discussion on the Review's recommendations at the All-Wales Standards Conference in February 2022.
- 5.2 Welsh Government have now opened a consultation on the Review's recommendations. The consultation ends on 23<sup>rd</sup> June 2023. The consultation document is attached at Appendix 2 to this report.

## **6. WELSH GOVERNMENT ('WG') CONSIDERATION OF THE RECOMMENDATIONS OF THE REVIEW**

### **6.1 Recommendation 1**

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

### **6.2 Consideration of recommendation 1**

WG do not propose to amend the Model Code but recognising that approaches to the management and monitoring of gifts and hospitality are often sensitive matters have recommended in the Statutory and Non Statutory Guidance for Principal

Councils in Wales supporting provisions within the Local Government Act 2000, the Local Government (Wales) Measure 2011 and the Local Government and Elections (Wales) Act 2021 that the approach to this is reviewed and agreed within individual principal councils and that the regular review of thresholds for declaration of gifts, hospitality, material benefit or advantage, are included in standards committee's annual report. This will assist in terms of transparency of the arrangements. As part of the guidance WG have also suggested this is a matter that should be routinely discussed by the monitoring officers and chairs of standards committees' groups. For Members' information RCT CBC's threshold is currently set at £25. This has been in place for a number of years. The Gifts & Hospitality Policy is due to be reviewed as part of the Committee's work programme for the next municipal year. Across the 22 LA's there is a move to standardise and adopt the threshold of £25 for all Councils.

### **6.3 Recommendation 2**

The 2000 Act requires members to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.

### **6.4 Consideration of recommendation 2**

The Model Code as set out in the regulations does not specifically require the disclosure of the detail of the councillor's home address when an interest is declared in terms of their home. However, in view of the requirements in the Code of Conduct for members to be open and transparent in their handling of matters relating to their personal interests, including the property they own and live in, guidance provided by the PSOW's office advised councillors to include the address. Following discussions with stakeholders, it was agreed that councillors are required to declare the interest but the PSOW's guidance has since been updated '**The Code of Conduct for members of local authorities in Wales**' advising members that it is sufficient to provide only the street name or postcode of the property. These changes relate to practical matters in respect of the publication of a councillor's home address only. It remains an obligation on councillors to ensure they declare personal and prejudicial interests in matters relating to any Council business which affects property they own or reside in. In view of the above the issue has now been resolved and therefore they propose no further action is required in respect of this recommendation.

### **6.5 Recommendation 3**

A 'person' is not defined either in the 2000 Act or in the Model Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

## 6.6 Consideration of recommendation 3

The Legislation (Wales) Act 2019 (and the Interpretation Act 1978) provide effectively identical definitions of a 'person'. This approach to a single definition of commonly used terms in the drafting of legislation is important to ensure primary and secondary legislation is not littered with conflicting, contradictory, or unnecessarily lengthy definitions of commonly used terms. Whilst WG sympathise with the example set out in the Review, they do not propose to take any action on this recommendation.

## 6.7 Recommendation 4

Paragraph 4a of the Code which requires that a member must: 'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion' does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

## 6.8 Consideration of recommendation 4

Section 4 of the Equality Act 2010 ('the 2010 Act') provides for the following protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The drafting of the Model Code pre-dates these provisions and, whilst the principles set out in the Model Code are in the spirit of the 2010 Act, discussions with stakeholders confirmed an alignment of the Model Code with the protected characteristics in the 2010 Act would not only provide clarity but also importantly send a strong message that councillors are expected to promote and maintain the highest standards of conduct. WG therefore propose to amend the definition in paragraph 4a of the Model Code of Conduct (**the Local Authorities (Model Code of Conduct) (Wales) Order 2008**) to align with the definition of protected characteristics in section 4 of the Equality Act 2010. They would also amend the definition of equality and respect in section 7 of **The Conduct of Members (Principles) (Wales) Order 2001**.

## **6.9 Recommendation 5**

The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.

## **6.10 Consideration of recommendation 5**

Discussions with stakeholders have included consideration as to how training, both induction training and on-going training, is being provided to elected members on the Model Code, including its application in the case of social media. The discussions on take up of training after the May 2022 elections have been positive and WG believe training and take up of training will be more effective in addressing this issue than amendment of the Model Code. The Model Code applies to a councillor's behaviour in a myriad of circumstances, and WG feel it is therefore not appropriate to carve out one context as opposed to others in the Model Code itself. WG therefore do not propose to amend the Model Code but will continue to work with the WLGA, One Voice Wales, the PSOW and monitoring officers to promote training as the most appropriate way of preventing inappropriate behaviour through the medium of social media.

In addition, WG have also included specific reference to Model Code training and the application of the Code in the context of social media in the revised statutory guidance on member training and development issued under section 7 of the Local Government (Wales) Measure 2011 and in the guidance on the training plans town and community councils are required to prepare under the 2021 Act.

## **6.11 Recommendation 6**

6 (1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

## **6.12 Consideration of recommendation 6**

The area of criminal behaviour is a legally complex one. Firstly, there is the issue of when should the member 'self-report' their own criminal behaviour. Should reporting happen when the member is charged or when the member is alerted to a criminal investigation taking place. How would this impact on the basic principles of natural justice and the possibility of the member prejudicing cases or investigations against themselves. Should reporting be required when a conviction has been made, even though an appeal may be underway or when all avenues of appeal have been exhausted. Either way the recommendation as made would set a higher bar for selfreporting than for reporting another member where 'reasonably believes' is set as the bar. A further question is how this approach would interface



with the disqualification regime for local authority membership. Currently, members are not disqualified until such time as all appeals are exhausted or they have not attended a local authority meeting for more than 6 months, whichever occurs first. Also, WG believe that the principles set out in The Conduct of Members (Principles) (Wales) Order 2001 are strong enough to rely upon a member selfreporting any action they may have taken which is potentially in breach of the principles and the related Code. WG therefore propose to take no further action in relation to this recommendation.

### 6.13 Recommendation 7

Mandatory training on the Code of Conduct for all members of principal councils and community councils. Include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004.

### 6.14 Consideration of recommendation 7

High quality, easily accessible training and its take-up has been a recurring theme in WG discussions with stakeholders. One Voice Wales and the WLGA have focussed on this in the run up to and post the May 2022 elections. Monitoring officers have also been prioritising code of conduct training for newly elected and returning members.

Training is one of the areas WG will be requiring standards committees to report on. Also, standards committees are required to work with political group leaders to support the delivery of their statutory duty to promote high standards of conduct amongst the members of their political groups in statutory guidance issued under the 2021 Act.

The requirement for and the provision of mandatory training on the code of conduct has wide ranging implications for prospective members, members and councils in terms of time commitment and cost. It would also potentially require primary legislation. WG have therefore explored this issue further as part of the recent **consultation on electoral administration and reform**. This consultation closed on 10 January. The responses received are currently being considered and will inform future policy on this matter.

WG will however:

- continue to work with councils, the WLGA and One Voice Wales to promote the importance of training and its take-up amongst councillors
- continue to support the development of easily accessible resources to enable training including on-line
- consider how this training is identified as part of the training and development assessment undertaken by heads of democratic services and democratic services committees in principal councils under the Local Government (Wales) Measure

2011 and as part of training plans produced under the 2021 Act in town and community councils

WG will also:

- engage with the PSOW and her office to assess the level and nature of complaints being received and whether non-attendance at training has been a contributory factor to the reported poor behaviour and the extent to which training is recommended as part of the remedy
- require standards committees to monitor and report on whether councillors who have been the subject of a complaint which has been upheld have or have not attended a training session on the code of conduct. WG have included this requirement in statutory guidance to standards committees issued under section 63 of the 2021 Act

### **6.15 Recommendation 8**

Increased use of local resolution of complaints, the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman.

### **6.16 Consideration of recommendation 8**

Local resolution protocols are intended to deal with what are sometimes called 'lower level' complaints made under the code of conduct by 1 member about another member, and sometimes, if appropriate, similar complaints made by officers or members of the public. These are usually complaints about failure to show respect and consideration to others.

Firstly, WG do not believe it is appropriate that any complaint made under the code of conduct should firstly be dealt with through local resolution. WG do not believe it was the intention of the recommendation in any case that all complaints would first be the subject of local resolution.

Secondly, WG suggest that the Model Code is just that, a Model Code which sets out the minimum legal requirement for inclusion in the code of conduct a council adopts. It would, in Welsh Government's view, be perfectly feasible for councils to include the requirement to have a local resolution protocol in their codes as adopted.

However, WG believe visibility of the process to the public, officers and members is important and WG have therefore included a requirement in their statutory guidance to standards committees on their annual reports to consider the operation of the local protocol and an assessment of its impact. Where no local protocol has been adopted, WG will require standards committees to consider

whether the adoption of such a protocol would support its functions in relation to promoting high standards of ethical conduct.

#### **6.17 Recommendation 9**

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

#### **6.18 Consideration of recommendation 9**

The Report identified that poor conduct (even if it does not meet the PSOW's threshold for full investigation) has an adverse impact on public and elected member confidence in the system. This view was again expressed in the context of 'low level' complaints which do not meet the bar for full investigation by the PSOW.

WG agree with the conclusions that action being seen to be taken and being taken to address this kind of behaviour is essential to maintain confidence in the system. However, WG do not believe a change in the law is required. When a case meets PSOW's threshold for investigation and the PSOW starts an investigation, section 70(4) of the 2000 Act states that where the PSOW ceases an investigation under section 69 before its completion, the PSOW may refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned. Even when cases are not investigated, PSOW's approach is to share all cases with the monitoring officers. This, when taken with the changes to the 2000 Act inserted by the 2021 Act, enhancing the role of political group leaders and standards committees to promote and maintain high standards of conduct amongst members, enables this issue to be addressed through discussions between the PSOW, monitoring officers and Standards Committees.

The PSOW has agreed to explore how she may support monitoring officers and standards committees with their enhanced role, and WG do not therefore intend to take any further action.

#### **6.19 Recommendation 10**

Changes to the powers and processes of the Adjudication Panel for Wales (APW).

#### **6.20 Consideration of recommendation 10**

The Report's recommendation included several proposals for changes to the procedures of the APW. Full details and WG proposed response can be found in the consultation document but included:

Restricted reporting orders (the Press); Anonymity of witnesses; Disclosure (unused materials); Appeal Tribunal procedure; Case Tribunal procedure; Sentencing powers – wider sanctioning powers; Interim Case Tribunals

#### **6.21 Recommendation 11: the role of Standards Committees**

Additional powers to require necessary training of members and the power to require a member to make an apology to the complainant. Establish an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees.

#### **6.22 Consideration of recommendation 11**

The recommendations relating to the powers of standards committees to require the necessary training of members and to require an apology to the complainant are related to the role the Review proposed for standards committees in addressing both complaints dealt with through the local resolution process and any referred back for local resolution after having been initially referred to the PSOW. WG do not believe standards committees need further legal powers to exercise these functions. The functions conferred upon them in the 2000 Act already include promoting and maintaining high standards of conduct and assisting members and co-opted members to observe the code of conduct. We therefore propose these are matters that could be incorporated into local codes and protocols without the need for further legislation. We have incorporated guidelines on these issues in the statutory guidance to standards committees in relation to the exercise of the new functions conferred upon them by the 2021 Act. The WLGA has agreed to convene an all-Wales forum for independent chairs of standards committees and the all-Wales standards conference has been re-established.

#### **6.23 Recommendation 12**

Accessibility of the ethical standards Framework. Make the framework process more accessible for the public.

#### **6.24 Consideration of recommendation 12**

WG agree with the review that public confidence in the Framework is essential to our local democracy. One of the steps in ensuring confidence is that the process is accessible and consistently applied across Wales. WG will therefore work with the PSOW, the WLGA, One Voice Wales and monitoring officers to raise public awareness of the Framework and what the public can expect if they engage with it. WG would welcome any views on how awareness raising might be taken forward so as to be inclusive of everyone across Wales.

## **6.25 Other related matters raised in discussions with stakeholders post publication of the Penn Review Report**

In addition to the recommendations raised in the review report stakeholders have raised a number of further issues with us and we are now also seeking

### **Advertising for independent members of standards committees**

The regulations require advertisements for vacancies for independent members of standards committees to be placed in local newspapers. Some stakeholders have told us that this does not generate a field of candidates and is costly and time consuming. They have suggested that other methods of advertising and reaching out through council networks generates a larger field and reaches candidates from more diverse backgrounds. (See regulation 13 the Standards Committees (Wales) Regulations 2001). WG are therefore seeking views on whether the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed.

### **Former council employees sitting as independent members on standards committees**

After a 12 month period of grace, former council employees can sit as independent members on standards committees of councils where that council was not 1 of their previous employers but not on the standards committee of the council which employed them, even if the council was not their most recent employer. This means all former employees including those who may have worked part time for the council, perhaps when they were students or early on in their careers cannot sit as independent members on the same council's standards committee. Stakeholders have suggested this is disproportionate and excludes a large number of potentially high-quality candidates from putting themselves forward as independent members or chairs. (See regulation 7 of the Standards Committees (Wales) Regulations 2001). WG are therefore seeking views on whether the lifelong ban on former council employees being independent members of their previous employer's standards committee should be removed. If so, what would be a suitable length for a period of grace between employment and appointment to a standards committee and should this be the same for all council employees, or longer for those who previously held statutory or politically restricted posts, as defined in the Local Government and Housing Act 1989, for example the Chief Executive, the Chief Finance Officer, the Monitoring Officer and the Head of Democratic Service?

### **Former councillors sitting as independent members on Standards Committees**

Also, after a 12 month grace period, former councillors may sit as independent members on standards committees of councils to which they were not elected. However, there is a lifelong ban on them serving as independent members on the standards committee of the council to which they were elected. (See regulation 6 of the Standards Committees (Wales) Regulations 2001). There is no longer a period of grace for councillors being employed by the council to which they were formally elected and so WG are also seeking views on whether the lifelong ban on serving as an independent member on the standards committee of the council to which a councillor was elected should be removed. If you think it should, what do you think would be a suitable period of grace?

### **Standards committees' summoning witnesses and sanctions**

The standards committee's role is to consider a report and recommendations from a monitoring officer or a report from the PSOW and, having heard representations from or on behalf of the person being investigated, determine whether there has been a breach of the authority's code of conduct or not and, if so, to decide the sanction. The standards committee may also request the monitoring officer or PSOW attend before it to, amongst other things explain their report. This is provided for in Regulation 8(3A) of the Local Government Investigations Regulations. However, standards committees do not have the power under either the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 or the Standards Committees (Wales) Regulations 2001 to summon witnesses. There is a view that if the standards committee were to have the power to summon witnesses, it could be seen to be encroaching on the role of the investigators i.e., the monitoring officer and the PSOW and blurring its role of decision maker. Some stakeholders have also suggested that the current sanctions available to standards committees in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 are too inflexible and/or not a sufficiently strong disincentive. The current sanctions enable a standards committee to censure, suspend or partially suspend a member for a period of up to 6 months.

## **5. FINANCIAL IMPLICATIONS**

There are no direct financial implications arising from this report. Any associated costs of providing training and advice for political group leaders would be met from the allocated budget. Any costs arising out of new legislation would be considered as part of the relevant regulatory impact assessment produced by WG aligned to that legislation.

## **6. LEGAL IMPLICATIONS**

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

## 7. **CONCLUSION**

Welsh Government have initiated a consultation on proposals to address the recommendations emanating from the Richard Penn review into the ethical standards framework in Wales. The Committee's view is now sought on the above matters so that a response can be formulated to the consultation.

**LOCAL GOVERNMENT ACT 1972**

**AS AMENDED BY**

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

**STANDARDS COMMITTEE**

**25 APRIL 2023**

**REPORT OF MONITORING OFFICER**

**BACKGROUND PAPERS**

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

**Freestanding Matter**

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



## **BIBLIOGRAPHY**

Set out below are all the amending enactments which have amended the Orders and Regulations referred to in the consultation document.

These links are legislation.gov.uk links and will take you to the 'original' Orders/Regulations again, but only the Fire and Rescue Services Act 2004 (Consequential Amendments) (Wales) Order 2005 has been partially revoked, and not the relevant regulation (regulation 55).

### **The Local Authorities (Model Code of Conduct) (Wales) Order 2008**

This Order has been amended by:

1. The Co-operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulations 2014/1815; [legislation.gov.uk](https://www.legislation.gov.uk)
2. The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016/84; [legislation.gov.uk](https://www.legislation.gov.uk)
3. The Local Government and Elections (Wales) Act 2021 (Consequential Amendments and Transitional Provision) (Chief Executives) Regulations 2022/355; [legislation.gov.uk](https://www.legislation.gov.uk) and
4. The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2022/806 [legislation.gov.uk](https://www.legislation.gov.uk).

### **The Conduct of Members (Principles) (Wales) Order 2001**

This Order has been amended by:

1. The Fire and Rescue Services Act 2004 (Consequential Amendments) (Wales) Order 2005/2929 [legislation.gov.uk](https://www.legislation.gov.uk); and
2. The Conduct of Members (Principles) (Wales) (Amendment) Order 2022/805 [legislation.gov.uk](https://www.legislation.gov.uk).

## **The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001**

These Regulations have been amended by:

1. The Public Audit (Wales) Act 2004 (Consequential Amendments) (Wales) Regulations 2005/761 [legislation.gov.uk](http://legislation.gov.uk);
2. The Fire and Rescue Services Act 2004 (Consequential Amendments) (Wales) Order 2005/2929 [legislation.gov.uk](http://legislation.gov.uk);
3. The Public Services Ombudsman (Wales) Act 2005 (Transitional Provisions and Consequential Amendments) Order 2006/362 [legislation.gov.uk](http://legislation.gov.uk);
4. The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009/2578 [legislation.gov.uk](http://legislation.gov.uk);
5. The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016/85 [legislation.gov.uk](http://legislation.gov.uk); and
6. The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) (Amendment) Regulations 2022/802 [legislation.gov.uk](http://legislation.gov.uk).

## **The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001**

These Regulations have been amended by:

1. The Public Services Ombudsman (Wales) Act 2005 (Transitional Provisions and Consequential Amendments) Order 2006/362; [legislation.gov.uk](http://legislation.gov.uk) and
2. The Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009/2578 [legislation.gov.uk](http://legislation.gov.uk).



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# Consultation on the recommendations of the Independent Review of the Ethical Standards Framework (Richard Penn report)

We are seeking your views on our response to the review of the Local Government Ethical Standards Framework.

**First published:** 24 March 2023

**Last updated:** 24 March 2023

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# Introduction

In March 2021, the then Minister for Housing and Local Government commissioned an independent Review of the Ethical Standards Framework (“the Framework”) for local government in Wales established by the Local Government Act 2000 (“the 2000 Act”). An overview of the Framework is included at annex 2. The Framework extends to county and county borough councils, corporate joint committees, national park authorities, fire and rescue authorities and community and town councils. Where the term council(s) is/are used throughout this document this also extends to all member(s) of the above-named bodies.

The Framework has remained largely unchanged over the last 20 years, so an independent review was felt important to maintain confidence in the system and ensure developments in the way councillors and their public lives are reflected in its operation.

An effective ethical framework is essential to ensure people and councillors from all backgrounds have confidence to engage with local democracy or stand for elected office. It is part of making Wales a diverse and inclusive nation and its review is an action in our Anti-racist Wales Action Plan.

In addition, it is essential the Framework reflects significant legislation made since its establishment, in particular the Equality Act 2010, the Well-being of Future Generations (Wales) Act 2015 and the Local Government and Elections (Wales) Act 2021 (“the 2021 Act”). This document contains links to the original legislation. In some cases, the legislation has since been amended and links to the amended legislation are contained in the bibliography at the end of this document.

The 2021 Act introduced several measures intended to complement the existing Framework. Firstly, it placed a new duty on leaders of political groups to take

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reasonable steps to promote and maintain high standards of conduct by the members of their group. In doing so, a group leader must co-operate with the council's standards committee in the exercise of its functions to promote and maintain high standards of conduct. In turn, a standards committee has new functions under the above 2021 Act to ensure group leaders have access to advice and training to support their new duties and to monitor group leaders' compliance with those duties.

Secondly, after the end of each financial year, standards committees will be required to make an annual report to the council describing how the committee's functions have been discharged and setting out an overview of conduct matters within the council. The council will be obliged to consider the report and any recommendations within 3 months of receipt.

## **Terms of reference for the review**

The independent review ("the Review") was undertaken by Richard Penn, a former local authority chief executive and former chair of the Independent Remuneration Panel for Wales.

The terms of the Review were as follows:

- an audit of the codes of conduct adopted by all the required authorities against the Model Code of Conduct to identify any local variances
- an analysis of the effectiveness of the Framework in fostering high standards of conduct in local government in Wales and public confidence in those arrangements
- consideration of whether the Framework is still 'fit for purpose', including whether the 10 principles of conduct are still relevant and whether the Model Code of Conduct needs updating. This included identification of areas where improvements could/should be made to the current arrangements
- consideration of the role of standards committees, including their role in

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relation to community councils and whether the establishment of sub-committees has any impact on the process of supporting community councils and dealing with complaints

- an analysis of the arrangements and protocols in place within authorities to support members and staff in preventing the need for issues to a) arise in the first place, and b) be escalated beyond local resolution. This included areas such as clear communication and signposting, training and awareness and the authorities' approach to addressing concerns
- consideration of the current sanctions and whether they are still appropriate

## Conclusions of the Independent Review of the Ethical Standards Framework

The **review** concluded the current Framework is 'fit for purpose' and works well in practice. It suggested a few amendments could lead to a greater emphasis in the Framework on prevention of complaints, improve the handling of complaints and result in already high ethical standards being further enhanced.

## Development of this consultation paper

Since the publication of the Review, we have engaged with stakeholders including monitoring officers, the Public Services Ombudsman for Wales (PSOW) and her office, the Welsh Local Government Association (WLGA) and One Voice Wales. We also listened carefully to the discussion on the Review's recommendations at the All-Wales Standards Conference in February 2022. In addition, we are grateful to the standards committees which have written to us with their views. This consultation paper builds on the Review's recommendations taking these discussions and other communications into account.

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# Consideration of the recommendations of the Review

## Recommendation 1

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

### Consideration of recommendation 1

The Review notes the Model Code of Conduct (“the Model Code”) does not include a threshold for the declaration of gifts, hospitality, material benefit or advantage. As a result, where councils have decided to include a threshold in their own codes, a wide variation has occurred ranging from £21 to £100. The Model Code of Conduct is annexed to the Local Authorities (Model Code of Conduct) (Wales) Order 2008, as amended.

Further exploration with stakeholders suggests this is because different councils are of different sizes and constitution. Also, local circumstances impact on whether councils have decided to include a threshold in their own code or not and, if so, what the threshold is. A threshold of £100 or £150 for example may not be appropriate for some councils, as for some it may be too high and for others it may be too low.

We do not propose to amend the Model Code but recognising that approaches to the management and monitoring of gifts and hospitality are often sensitive matters we have recommended in our Statutory and Non Statutory Guidance for Principal Councils in Wales supporting provisions within the Local Government Act 2000, the Local Government (Wales) Measure 2011 and the Local

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Government and Elections (Wales) Act 2021 that the approach to this is reviewed and agreed within individual principal councils and that the regular review of thresholds for declaration of gifts, hospitality, material benefit or advantage, are included in standards committee's annual report. This will assist in terms of transparency of the arrangements.

As part of the guidance, we have also suggested this is a matter that should be routinely discussed by the monitoring officers and chairs of standards committees' groups.

## Recommendation 2

The 2000 Act requires members to include their home address in their Council's Register of Interests. There is agreement that the Code should not require Councillors to disclose their home address and that the Code should be amended appropriately.

### Consideration of recommendation 2

The Model Code as set out in the regulations does not specifically require the disclosure of the detail of the councillor's home address when an interest is declared in terms of their home.

However, in view of the requirements in the Code of Conduct for members to be open and transparent in their handling of matters relating to their personal interests, including the property they own and live in, guidance provided by the PSOW's office advised councillors to include the address. Following discussions with stakeholders, it was agreed that councillors are required to declare the interest but the PSOW's guidance has since been updated '[The Code of Conduct for members of local authorities in Wales](#)' advising members that it is sufficient to provide only the street name or postcode of the property. These

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changes relate to practical matters in respect of the publication of a councillor's home address only. It remains an obligation on councillors to ensure they declare personal and prejudicial interests in matters relating to any Council business which affects property they own or reside in.

In addition, the local authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022 Amendment to the Local Government Act 1972, which apply in relation to Wales, amend the Local Government Act 1972 ("the 1972 Act") and the local authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 ("the 2001 Regulations") removing the requirement for county councils in Wales to publish details of councillors' personal home addresses.

In view of the above the issue has now been resolved and we therefore propose no further action is required in respect of this recommendation.

### **Recommendation 3**

A 'person' is not defined either in the 2000 Act or in the Model Code. It is recommended that a clear definition of what is meant by a 'person' on the face of the legislation or in the Model Code would be beneficial.

### **Consideration of recommendation 3**

The Legislation (Wales) Act 2019 (and the Interpretation Act 1978) provide effectively identical definitions of a 'person'. This approach to a single definition of commonly used terms in the drafting of legislation is important to ensure primary and secondary legislation is not littered with conflicting, contradictory, or unnecessarily lengthy definitions of commonly used terms.

Whilst we sympathise with the example set out in the Review, we do not

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propose to take any action on this recommendation.

## **Recommendation 4**

Paragraph 4a of the Code which requires that a member must: 'carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion' does not include all protected characteristics. The provision in the Code should be extended to include all nine protected characteristics under the Equality Act 2010.

### **Consideration of recommendation 4**

Section 4 of the Equality Act 2010 ('the 2010 Act') provides for the following protected characteristics:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

The drafting of the Model Code pre-dates these provisions and, whilst the principles set out in the Model Code are in the spirit of the 2010 Act, discussions with stakeholders confirmed an alignment of the Model Code with the protected characteristics in the 2010 Act would not only provide clarity but also importantly send a strong message that councillors are expected to promote and maintain

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the highest standards of conduct.

We therefore propose to amend the definition in paragraph 4a of the Model Code of Conduct ([the Local Authorities \(Model Code of Conduct\) \(Wales\) Order 2008](#)) to align with the definition of protected characteristics in section 4 of the Equality Act 2010.

We will also amend the definition of equality and respect in section 7 of [The Conduct of Members \(Principles\) \(Wales\) Order 2001](#).

## Recommendation 5

The potential for breaches of the Code as a result of the extensive and increasing use of social media is a matter of concern. The helpful guidance by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code.

### Consideration of recommendation 5

Discussions with stakeholders have included consideration as to how training, both induction training and on-going training, is being provided to elected members on the Model Code, including its application in the case of social media.

The discussions on take up of training after the May 2022 elections have been positive and we believe training and take up of training will be more effective in addressing this issue than amendment of the Model Code. The Model Code applies to a councillor's behaviour in a myriad of circumstances, and we feel it is therefore not appropriate to carve out one context as opposed to others in the Model Code itself.

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We therefore do not propose to amend the Model Code but will continue to work with the WLGA, One Voice Wales, the PSOW and monitoring officers to promote training as the most appropriate way of preventing inappropriate behaviour through the medium of social media.

In addition, we have also included specific reference to Model Code training and the application of the Code in the context of social media in our revised statutory guidance on member training and development issued under section 7 of the Local Government (Wales) Measure 2011 and in the guidance on the training plans town and community councils are required to prepare under the 2021 Act.

## **Recommendation 6**

6 (1)(b) of the Code of Conduct places the obligation on elected members to report the criminal behaviour of others but not of themselves. The Code should be appropriately amended to make this an obligation of the member to themselves report on their own criminal conduct.

### **Consideration of recommendation 6**

The area of criminal behaviour is a legally complex one. Firstly, there is the issue of when should the member 'self-report' their own criminal behaviour. Should reporting happen when the member is charged or when the member is alerted to a criminal investigation taking place. How would this impact on the basic principles of natural justice and the possibility of the member prejudicing cases or investigations against themselves.

Should reporting be required when a conviction has been made, even though an appeal may be underway or when all avenues of appeal have been exhausted. Either way the recommendation as made would set a higher bar for self-reporting than for reporting another member where 'reasonably believes' is set

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as the bar.

A further question is how this approach would interface with the disqualification regime for local authority membership. Currently, members are not disqualified until such time as all appeals are exhausted or they have not attended a local authority meeting for more than 6 months, whichever occurs first.

Also, we believe that the principles set out in The Conduct of Members (Principles) (Wales) Order 2001 are strong enough to rely upon a member self-reporting any action they may have taken which is potentially in breach of the principles and the related Code.

We therefore propose to take no further action in relation to this recommendation.

## **Recommendation 7**

Mandatory training on the Code of Conduct for all members of principal councils and community councils. Include a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004.

### **Consideration of recommendation 7**

High quality, easily accessible training and its take-up has been a recurring theme in our discussions with stakeholders. One Voice Wales and the WLGA have focussed on this in the run up to and post the May 2022 elections. Monitoring officers have also been prioritising code of conduct training for newly elected and returning members.

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Training is one of the areas we will be requiring standards committees to report on. Also, standards committees are required to work with political group leaders to support the delivery of their statutory duty to promote high standards of conduct amongst the members of their political groups in statutory guidance issued under the 2021 Act.

The requirement for and the provision of mandatory training on the code of conduct has wide ranging implications for prospective members, members and councils in terms of time commitment and cost. It would also potentially require primary legislation. We have therefore explored this issue further as part of the recent [consultation on electoral administration and reform](#). This consultation closed on 10 January. The responses received are currently being considered and will inform future policy on this matter.

The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004 has not been revoked or amended since it was made in 2004. The declaration of office is included in Schedule 1 as follows:

- I [(1)] having been elected to the office of [ (2)] of [ (3)] declare that I take that office upon myself, and will duly and faithfully fulfil the duties of it according to the best of my judgement and ability.
- I undertake to observe the code for the time being as to the conduct which is expected of members of [ (4)] and which may be revised from time to time.
- Signed     Date
- This declaration was made and signed before me.
- Signed

Proper officer of the Council (5)

(1) Insert the name of the person making the declaration.

(2) Insert 'member' or Mayor as appropriate.

(3) and (4) Insert the name of the authority of which the person making the declaration is a member or mayor.

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(5) Where the declaration is made before another person authorised by section 83(3) or (4) of the Local Government Act 1972, state instead the capacity in which that person takes the declaration.

Arguably, including a reference to training in the declaration of office in effect makes training mandatory and so we do not propose to make any amendments to it at this time.

We will however:

- continue to work with councils, the WLGA and One Voice Wales to promote the importance of training and its take-up amongst councillors
- continue to support the development of easily accessible resources to enable training including on-line
- consider how this training is identified as part of the training and development assessment undertaken by heads of democratic services and democratic services committees in principal councils under the Local Government (Wales) Measure 2011 and as part of training plans produced under the 2021 Act in town and community councils

We will also:

- engage with the PSOW and her office to assess the level and nature of complaints being received and whether non-attendance at training has been a contributory factor to the reported poor behaviour and the extent to which training is recommended as part of the remedy
- require standards committees to monitor and report on whether councillors who have been the subject of a complaint which has been upheld have or have not attended a training session on the code of conduct. We have included this requirement in statutory guidance to standards committees issued under section 63 of the 2021 Act

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## Recommendation 8

Increased use of local resolution of complaints, the Model Code of Conduct should be appropriately amended to require that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman.

### Consideration of recommendation 8

Local resolution protocols are intended to deal with what are sometimes called 'lower level' complaints made under the code of conduct by 1 member about another member, and sometimes, if appropriate, similar complaints made by officers or members of the public. These are usually complaints about failure to show respect and consideration to others.

Firstly, we do not believe it is appropriate that any complaint made under the code of conduct should firstly be dealt with through local resolution. We do not believe it was the intention of the recommendation in any case that all complaints would first be the subject of local resolution.

Secondly, we suggest that the Model Code is just that, a Model Code which sets out the minimum legal requirement for inclusion in the code of conduct a council adopts. It would, in Welsh Government's view, be perfectly feasible for councils to include the requirement to have a local resolution protocol in their codes as adopted.

However, we believe visibility of the process to the public, officers and members is important and we have therefore included a requirement in our statutory guidance to standards committees on their annual reports to consider the operation of the local protocol and an assessment of its impact. Where no local protocol has been adopted, we will require standards committees to consider

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whether the adoption of such a protocol would support its functions in relation to promoting high standards of ethical conduct.

## **Recommendation 9**

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

### **Consideration of recommendation 9**

The Report identified that poor conduct (even if it does not meet the PSOW's threshold for full investigation) has an adverse impact on public and elected member confidence in the system. This view was again expressed in the context of 'low level' complaints which do not meet the bar for full investigation by the PSOW.

We agree with the conclusions that action being seen to be taken and being taken to address this kind of behaviour is essential to maintain confidence in the system. However, we do not believe a change in the law is required.

When a case meets PSOW's threshold for investigation and the PSOW starts an investigation, section 70(4) of the 2000 Act states that where the PSOW ceases an investigation under section 69 before its completion, the PSOW may refer the matters which are the subject of the investigation to the monitoring officer of the relevant authority concerned. Even when cases are not investigated, PSOW's approach is to share all cases with the monitoring officers. This, when taken with the changes to the 2000 Act inserted by the 2021 Act, enhancing the role of political group leaders and standards committees to promote and maintain high

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standards of conduct amongst members, enables this issue to be addressed through discussions between the PSOW, monitoring officers and standards committees.

The PSOW has agreed to explore how she may support monitoring officers and standards committees with their enhanced role, and we do not therefore intend to take any further action.

## **Recommendation 10**

Changes to the powers and processes of the Adjudication Panel for Wales (APW).

### **Consideration of recommendation 10**

The Report's recommendation included several proposals for changes to the procedures of the APW as follows.

### **Restricted reporting orders**

The APW cannot control the reporting by the press about any case. The APW President considers that the powers such as those available to an Employment Tribunal, to impose a restricted reporting order either until the end of proceedings or an extended restricted reporting order, would be appropriate for all APW Tribunals where the fairness of the tribunal or the safety of witnesses, panel members or staff are potentially compromised.

We are therefore seeking your views on whether we should make legislative provision to enable the APW to issue restricted reporting orders, and a question on this is included in the consultation questions below.

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## **Anonymity of witnesses**

The President can issue guidance to ensure consistency and transparency, but the APW believes an express power to anonymise, used proportionately to ensure witness safety, would be appropriate for both case and appeal tribunals.

We are therefore seeking your views as to whether there should be express legal provision for the APW to protect the anonymity of witnesses and a question on this is included in the consultation questions below.

## **Disclosure**

An issue related to the disclosure of the unused material held by the PSOW and monitoring officers was identified in the Report. It has been agreed to amend the PSOW's own process in this regard, with Presidential Guidance / Practice Direction on both disclosure and the role of the monitoring officer generally.

This issue has now been resolved through a change to Presidential Guidance and therefore no further action is required.

## **Appeal Tribunal procedure**

The APW President believes there should be amendments to the Appeal Tribunal procedure to include an express power to summon witnesses to an Appeal Tribunal.

Also, regulation 9(2) of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 ("the 2001 Regulations") requires the standards committee to consider a recommendation from the APW decision that a different penalty should be

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imposed to the original decision. Some stakeholders do not support this process whilst the APW President does support it as the standards committee remains responsible and can reflect its response to the Panel decision in the sanction it decides to impose.

The current arrangements in relation to appeals are set out in the 2001 Regulations and in Presidential Guidance. There is also a APW Practice Direction which sets out relevant information about the APW's procedures in response to a reference from the PSOW. The Guidance and Practice Directions are available on the [APW website](#). Also see the [APW's Presidential Guidance and Practice Directions](#).

We are therefore interested in your views as to whether an express power to summon witnesses to appeal tribunals should be provided for, and whether there should be any changes in the procedure referring appeal decisions back to standards committees. A question on this is included in the consultation questions below.

## Case Tribunal procedure

The APW President considers that the regulations are outdated and has proposed a number of amendments to make the case tribunal procedure more efficient and fairer to witnesses.

These proposals relate to:

- providing express provision for part public and part private hearings
- whether the requirement to provide 7 days' notice of postponement of a hearing to the accused member should be reconsidered
- the process for seeking permission to appeal

The current process for seeking permission to appeal is set out in the Local

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Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001, as amended by The Local Government (Standards Committee, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016.

It requires the President, or their nominee, to make a decision within 21 days of receipt of a request to appeal. If the President requests further information the applicant has 14 days to respond, and then the President has 14 days from the receipt of the further information to make a decision. However, there is potential for different interpretations of the impact of a request for additional information on the timetable as it is potentially unclear whether the 'clock' on the 21 days stops while the additional information is being sought.

In addition, the regulations do not give the PSOW any opportunity to make submissions and a preliminary hearing to decide whether to grant permission to appeal is possible if there are 'special circumstances', but there is no extension of time provided for in the regulations to allow for this.

The President has therefore proposed an alternative approach as follows:

- Councillor sends in appeal; no deadline is set for an APW decision
- President/Registrar checks the appeal has attached the decision of the standards committee and if not, gives the councillor 7 days to provide it (and has the power to ask the monitoring officer if they so wish for the decision and any other information)
- the appeal is sent to the PSOW who is given 14 days to comment
- the appeal, decision of the standards committee and any comments from the PSOW are put before the President (or their nominee) for a decision on the papers; again, no deadline would be set for a decision
- the President or their nominee can direct a preliminary hearing takes place if they consider it is in the 'interests of justice' to do so as opposed to 'special circumstances'

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We would welcome your views on these proposed changes to the permission to appeal procedure. Similarly, on whether there should be an express provision to enable part or all of a hearing to be held in private, and also whether the requirement to provide not less than 7 days' notice of the postponement of a hearing should be retained.

Questions on the above are included in the consultation questions below.

## **Sentencing powers**

The powers available to the APW are limited and some stakeholders felt there should be an option to impose more varied sanctions as was the case with the former Adjudication Panel for England.

Where a case tribunal decides that a member has failed to comply with the code of conduct the sanctions it may impose are set out in section 79 of the 2000 Act. The tribunal may suspend a member for a period of up to 12 months or disqualify them for a period of up to 5 years.

We are interested in your views as to whether there should be a wider range of sanctions available to the APW and if so, what should these be? A question on this is included in the consultation questions below.

## **Interim Case Tribunals**

The PSOW has the power to make interim referrals to the APW if it is in the public interest and where there is prima facie evidence that the person has failed to comply with the code of conduct, the nature of which is likely to lead to disqualification.

The threshold for meeting the legislative requirements for an interim referral is

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considered by stakeholders to be too high, but any change to these powers would require primary legislation by the Welsh Government.

The proposal is that the whole process should be simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal. This would be a relatively minor amendment to the current public interest test but would make the approach to be adopted and the definition of public interest much clearer. It would require new legislation by the Welsh Government.

To date there have been no interim tribunals. Stakeholders have suggested that this is largely because the process is the same as for a full case tribunal. The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001 are therefore perceived to be a barrier to their intended purpose.

Sections 76, 77 and 78 of the 2000 Act set out the membership of interim tribunals, the ability of the person who is the subject of the adjudication to have appropriate representation and the sanction which an interim tribunal can issue (a maximum of a one-off, 6 month suspension or partial suspension).

The process as currently set out therefore seems not to be fit for the purpose of balancing, and not prejudicing, an elected member's access to justice at a case tribunal with the public interest.

It has therefore been suggested the process is simplified by applying a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal Service ("MPTS"). The interim case tribunal would proceed with a legal member sitting alone, and considering the application on the papers only, but with the ability to invite oral submission from the parties if the member considered that to be in the interests of justice.

As now, the process would also enable the PSOW to submit a reference to the



President of the APW with a report setting out the background and why an interim suspension was sought.

At the most, only 6 months suspension (partial or full) would be possible and could be renewed up to 3 times in total (18 months in total). The accused member would be given an opportunity to submit why the interim suspension should not be made, but there would be no evidence called and the PSOW's report would be taken at face value, in the same way as the GMC's at the MPTS.

A possible approach to the public interest test is as follows. It would be appropriate to suspend or partially suspend a member where it appears to the interim case tribunal that:

- a case tribunal at a final hearing would be likely to make a finding that there has been a failure to comply with the code of conduct of the relevant authority concerned
- and the nature of that failure is such as to be likely to lead to disqualification under section 79(4)(b) of the 2000 Act
- and that it is in the public interest to suspend or partially suspend the accused member immediately for the protection of members of the public, to maintain public confidence in local government, to uphold proper standards of conduct and behaviour, or to enable the completion of the PSOW's investigation

To fully achieve this change would require amendment to the 2000 Act and The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001

We are therefore seeking your views on this proposal and a possible intermediate step of amending the regulations only to simplify the process for interim case tribunals until such time, if the proposal is supported, a change can be made to the primary legislation. Amendment to the regulations could include

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a new schedule specifically for a shorter, more streamlined process for interim tribunals. A question on this is included in the consultation questions below.

## **Recommendation 11: the role of Standards Committees**

Additional powers to require necessary training of members and the power to require a member to make an apology to the complainant.

Establish an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees.

### **Consideration of recommendation 11**

The recommendations relating to the powers of standards committees to require the necessary training of members and to require an apology to the complainant are related to the role the Review proposed for standards committees in addressing both complaints dealt with through the local resolution process and any referred back for local resolution after having been initially referred to the PSOW. We do not believe standards committees need further legal powers to exercise these functions. The functions conferred upon them in the 2000 Act already include promoting and maintaining high standards of conduct and assisting members and co-opted members to observe the code of conduct.

We therefore propose these are matters that could be incorporated into local codes and protocols without the need for further legislation. We have incorporated guidelines on these issues in the statutory guidance to standards committees in relation to the exercise of the new functions conferred upon them by the 2021 Act.

The WLGA has agreed to convene an all-Wales forum for independent chairs of

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standards committees and the all-Wales standards conference has been re-established. These actions were not for the Welsh Government, but we support them and very much welcome the establishment of the network and the reconvening of the conference.

## **Recommendation 12**

Accessibility of the ethical standards Framework. Make the framework process more accessible for the public.

### **Consideration of recommendation 12**

We agree with the review that public confidence in the Framework is essential to our local democracy. One of the steps in ensuring confidence is that the process is accessible and consistently applied across Wales. We will therefore work with the PSOW, the WLGA, One Voice Wales and monitoring officers to raise public awareness of the Framework and what the public can expect if they engage with it.

We would welcome any views on how awareness raising might be taken forward so as to be inclusive of everyone across Wales. A question on this is included in the consultation questions below.

## **Other related matters raised in discussions with stakeholders post publication of the Penn Review Report**

In addition to the recommendations raised in the review report stakeholders have raised a number of further issues with us and we are now also seeking

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views on the following.

## **Advertising for independent members of standards committees**

The regulations require advertisements for vacancies for independent members of standards committees to be placed in local newspapers. Some stakeholders have told us that this does not generate a field of candidates and is costly and time consuming. They have suggested that other methods of advertising and reaching out through council networks generates a larger field and reaches candidates from more diverse backgrounds. (See regulation 13 the Standards Committees (Wales) Regulations 2001).

We are therefore seeking views on whether the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed. A question on this is included in the consultation questions below.

## **Former council employees sitting as independent members on standards committees**

After a 12 month period of grace, former council employees can sit as independent members on standards committees of councils where that council was not 1 of their previous employers but not on the standards committee of the council which employed them, even if the council was not their most recent employer.

This means all former employees including those who may have worked part time for the council, perhaps when they were students or early on in their careers cannot sit as independent members on the same council's standards committee.

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Stakeholders have suggested this is disproportionate and excludes a large number of potentially high-quality candidates from putting themselves forward as independent members or chairs. (See regulation 7 of the Standards Committees (Wales) Regulations 2001).

We are therefore seeking views on whether the lifelong ban on former council employees being independent members of their previous employer's standards committee should be removed.

If so, what would be a suitable length for a period of grace between employment and appointment to a standards committee and should this be the same for all council employees, or longer for those who previously held statutory or politically restricted posts, as defined in the Local Government and Housing Act 1989, for example the Chief Executive, the Chief Finance Officer, the Monitoring Officer and the Head of Democratic Service?

A question on this is included in the consultation questions below.

## **Former councillors sitting as independent members on Standards Committees**

Also, after a 12 month grace period, former councillors may sit as independent members on standards committees of councils to which they were not elected. However, there is a lifelong ban on them serving as independent members on the standards committee of the council to which they were elected. (See regulation 6 of the Standards Committees (Wales) Regulations 2001).

There is no longer a period of grace for councillors being employed by the council to which they were formally elected and so we are also seeking views on whether the lifelong ban on serving as an independent member on the standards committee of the council to which a councillor was elected should be removed.

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If you think it should, what do you think would be a suitable period of grace?

A question on this is included in the consultation questions below.

## **Standards committees' summoning witnesses and sanctions**

The standards committee's role is to consider a report and recommendations from a monitoring officer or a report from the PSOW and, having heard representations from or on behalf of the person being investigated, determine whether there has been a breach of the authority's code of conduct or not and, if so, to decide the sanction. The standards committee may also request the monitoring officer or PSOW attend before it to, amongst other things explain their report. This is provided for in Regulation 8(3A) of the Local Government Investigations Regulations.

However, standards committees do not have the power under either the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 or the Standards Committees (Wales) Regulations 2001 to summon witnesses. There is a view that if the standards committee were to have the power to summon witnesses, it could be seen to be encroaching on the role of the investigators i.e., the monitoring officer and the PSOW and blurring its role of decision maker.

Some stakeholders have also suggested that the current sanctions available to standards committees in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 are too inflexible and/or not a sufficiently strong disincentive. The current sanctions enable a standards committee to censure, suspend or partially suspend a member for a period of up to 6 months.

We are therefore seeking views on these issues, and a question on this is

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included in the consultation questions below.

## Consultation questions

### Question 1

Do you agree the relevant regulations relating to the Ethical Standards Framework should be amended to align with the definitions relating to protected characteristics in the Equality Act 2010, and that we should amend the definition of equality and respect in section 7 of The Conduct of Members (Principles) (Wales) Order 2001?

### Question 2

Should the Adjudication Panel Wales (APW) be able to issue Restricted Reporting Orders?

### Question 3

Should there be express legal provision to enable the APW to protect the anonymity of witnesses?

### Question 4

Do you support the proposed changes to the permission to appeal procedure outlined in this recommendation. If not, what alternatives would you suggest?

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## Question 5

Should there be an express power for the APW to summon witnesses to appeal tribunals?

## Question 6

Should there be any changes in the procedure for referring appeals decisions back to standards committees?

## Question 7

Do you agree there should be an express provision to enable part or all of tribunal hearings to be held in private?

## Question 8

Do you agree that the requirement to provide not less than seven days' notice of the postponement of a hearing should be retained?

## Question 9

Should there be a wider range of sanctions available to the APW, and if so, what should they be?

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## Question 10a

Do you support the proposed amendments to the process for interim case tribunals outlined in this recommendation? If not, could you please explain.

## Question 10b

If you do support the changes to the process for interim case tribunals, do you agree that an intermediate arrangement should be put in place i.e. by shortening and streamlining the process for interim case tribunals in The Adjudications by Case Tribunals and Interim Case Tribunals (Wales) Regulations 2001? If yes, do you have any suggestions as to how this process could be streamlined within the regulations?

## Question 11

Do you have any further views on the recommendations made in relation to the operation of the APW?

## Question 12

Do you have any suggestions as to how work might be taken forward to raise awareness of the Ethical Standards Framework, in particular for people with protected characteristics as described in the Equality Act 2010?

## Question 13

Advertising for independent members of standards committees: Do you agree

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the requirement to advertise vacancies for independent members on standards committees in newspapers should be removed?

## Question 14a

Former council employees sitting as independent members on standards committees: Do you agree that the lifelong ban on former council employees being independent members of their previous employer's standards committee should be removed?

## Question 14b

If yes, what do you think would be a suitable period of grace between employment and appointment to a standards committee, and should this be the same for all council employees, or longer for those who previously holding statutory or politically restricted posts?

## Question 15

Former councillors sitting as independent members on standards committees: Do you agree that the lifelong ban on serving as an independent member on the standards committee of the council to which a councillor was elected should be removed? If yes, what do you think would be a suitable period of grace?

## Question 16

Standards committees' summoning witnesses and sanctions: Should standards committees have the power to summon witnesses?

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## Question 17

Do you agree that the sanctions a standards committee can impose should be changed or added to? If yes, what sanctions would you suggest?

## Question 18

We would like to know your views on the effects that the above changes to the Framework and Model Code of Conduct 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?

## Question 19

How could positive effects be increased, or negative effects be mitigated?

## Question 20

Please also explain how you believe the proposed amendments 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 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 21

Do you have any other comments you wish to make on the matters raised in this consultation, including for those Report Recommendations where no specific question has been posed?

## How to respond

Submit your comments by **23 June 2023**, in any of the following ways:

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

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## Information Commissioner’s Office

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