



RHONDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

23 NOVEMBER 2018

ADJUDICATION PANEL FOR WALES - REVISED SANCTIONS GUIDANCE

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF THE REPORT

To provide Members with the Adjudication Panel for Wales (APW) revised sanctions guidance (the 'Guidance'), for when a Councillor has been found to have breached the Members' Code of Conduct (the 'Code') by a case tribunal, or an appeal tribunal.

2. RECOMMENDATION

- 2.1 That the Committee considers the contents of the Adjudication Panel for Wales' Sanctions Guidance.

3. BACKGROUND

- 3.1 The APW have issued the Guidance, attached as Appendix 1 to the report, pursuant to its powers under Section 75(10) of the Local Government Act 2000. The Guidance came into effect on 1st September 2018.
- 3.2 The primary purpose of the Guidance is to assist the APW's case tribunals, when considering the appropriate sanction to impose where a Councillor has been found to have breached the Code. It also seeks to fulfil the wider role of supporting all those, including local Standards Committees, in maintaining, promoting and adjudicating on the Code. The Guidance is a living document that will be updated and revised as the need arises, following consultation.
- 3.3 The Guidance describes: 1. The ethical framework for conduct of County, Town and Community Councillors; 2. The role of the APW; and 3. The approach of the APW's tribunals to sanctions, following a finding that the Code has been breached.

Purpose of sanctions

- 3.4 The Guidance sets out five purposes as follows:- 1. To provide a disciplinary response to an individual Member's breach of the Code; 2. To place misconduct and sanction on public record; 3. To deter future misconduct; 4.

To promote a culture of compliance with the Code; and 5. To foster public confidence in local democracy.

Types of APW Tribunal and available sanctions

- 3.5 There are three types of tribunal which can be established by the President of the APW. A Case Tribunal, an Interim Case Tribunal or an Appeal Tribunal.
- 3.6 A Case Tribunal is an independent tribunal established to consider an alleged breach of the Code, where a full investigation by the Public Services Ombudsman for Wales (PSOW) has taken place and the PSOW has referred his report on his investigation to the APW. Should the APW find that the Code has been breached, the sanctions available are 1. To take no action; 2. To suspend or partially suspend a Member for up to twelve months; or 3. To disqualify a Member for up to five years.
- 3.7 An Interim Case Tribunal is an independent tribunal established when an investigation is underway by the PSOW but has been referred to them to consider whether to suspend or partially suspend the Member under investigation, pending the completion of his investigation. The maximum period of suspension is six months, or, if less than six months, until the investigation is complete. Unlike the Case Tribunal and Appeal Tribunal, a decision to suspend is a neutral act given the investigation is still ongoing.
- 3.8 An Appeal Tribunal is an independent tribunal of the APW established to review a decision of a local Standards Committee, where the PSOW has referred an investigation to them. The tribunal must decide whether to uphold and endorse the decision and sanction imposed by the Standards Committee, uphold the decision on breach of the Code but refer the matter back to the Standards Committee with a recommendation as to an alternative sanction, or to overturn the decision that the Code has been breached. The available sanctions are the same as those that are open to the Standards Committee on referral to them by the PSOW; that is, to censure or to suspend or partially suspend up to a maximum of six months.

Approach and process in determining sanction

- 3.9 Tribunals established by the APW must always have in mind underlying principles of fairness, the public interest, proportionality, consistency and equality and impartiality when approaching the issue of sanction. The appointed tribunal must also act in accordance with Article 6 (right to a fair hearing) of the European Convention on Human Rights (ECHR) and in addition, both when considering whether a Councillor is in breach of the Code, and when considering whether to impose a sanction, the APW has to assess whether such a finding would be a breach of the Councillor's enhanced right to freedom of speech under Article 10 of the ECHR. The High Court established that there is a three-stage approach that must be followed in this regard: - 1. Can the tribunal conclude that there has been a breach of the Code as a matter of fact? 2. If so, is the finding of breach and the imposition of a sanction on the face of it a breach of Article 10? and 3. If so, is the restriction one which is justified by reason of the requirements set out in Article 10 as to when the convention right may be legitimately interfered with?
- 3.10 The Guidance sets out a five-stage process for a tribunal in determining sanction: - 1. Assess the seriousness of the breach and consequences for

individuals and/or the Council; 2. Identify the broad type of sanction most likely to be appropriate having regard to the breach; 3. Consider any mitigating and/or aggravating factors surrounding the breach; 4. Consider any further adjustments necessary; and 5. Confirm the decision on sanction and include within a written decision an explanation of the sanction imposed.

- 3.11 Paragraphs 34 to 66 of the Guidance explain in detail how these stages of the process will work. For example, in respect of assessing seriousness of the breach, the Guidance explains that matters such as nature and extent of the breach, the number of breaches, the Councillor's culpability/intentions, any previous breaches of the Code, and the consequences of the breach on individuals, the council and the wider public, are all matters to which a tribunal will have regard. The tribunals will start by considering the appropriateness of possible sanctions of least impact. Paragraphs 36 to 38 give examples of the types of behaviour that are likely to lead to harsher sanctions. The Guidance provides a useful and detailed explanation of the other four stages of the process for determining sanction.
- 3.12 In addition to the Guidance, the APW also publish an annual report which summarises the cases they have heard and the decisions they have made and the web address for those reports is set out below:

<http://apw.gov.wales/about/annual-reports/?lang=en>

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

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Background Papers: Freestanding matter

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