



RHONDDA CYNON TAF

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

STANDARDS COMMITTEE

19 MARCH 2021

REVIEW OF THE PROCEDURES FOR DEALING WITH COMPLAINTS REFERRED TO THE STANDARDS COMMITTEE BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES

REPORT OF THE MONITORING OFFICER

1. PURPOSE OF REPORT

To review the procedures for dealing with complaints referred to the Committee by the Public Services Ombudsman For Wales (the 'Ombudsman'), determine whether any amendments are required to be made to those procedures and ensure they remain fit for purpose.

2. RECOMMENDATION

The Committee is recommended to:

- 2.1 Authorise the Monitoring Officer to amend the procedures for dealing with complaints referred to the Committee as shown in **Appendix A**, subject to any further amendments agreed by the Committee.

3. BACKGROUND

- 3.1 All Members of Rhondda Cynon Taf County Borough Council are bound by the statutory Members' Code of Conduct adopted by the Council (pursuant to section 51 of the Local Government Act 2000 (the Act'). The Standards Committee is also the responsible body for hearing complaints referred to it by the Ombudsman or Monitoring Officer that relate to members of Town and Community Councils within the Rhondda Cynon Taf area.
- 3.2 The Ombudsman may investigate any alleged breach of the Code of Conduct by a Member (under section 69 of the Act).
- 3.3 Under the Standards Committee's terms of reference (paragraph (g)), the Committee has responsibility for:

- (g) *Dealing with any reports from a case tribunal or interim case tribunal, and any report from the Monitoring Officer on any matter referred to that Officer by the Public Services Ombudsman For Wales.*
- 3.4 The Committee has adopted separate procedures for it to determine:
(i) complaints referred by the Ombudsman - this procedure was last amended in April 2011; and
(ii) complaints under the Local Resolution Protocol.
- 3.5 The Ombudsman may refer a misconduct complaint to the Monitoring Officer under section 70(4) or section 71(2) of the Act. A referral under section 70(4) requires the Monitoring Officer to conduct an investigation into the complaint and then submit an investigation report to the Standards Committee for determination of the complaint. A referral under section 71(2) is made when the Ombudsman has investigated the complaint and requires the Monitoring Officer to consider the investigation report and submit it, with recommendations, to the Standards Committee for determination.
- 3.6 The powers and duties of the Monitoring Officer and the Standards Committee and the procedure to be followed in dealing with a referral from the Ombudsman are set out in the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001 ('the Regulations').
- 3.7 Upon receiving a referral from the Ombudsman under section 71(2) of the Act, the Monitoring Officer is obliged to consider the Ombudsman's investigation report and, if appropriate, make recommendations to the Standards Committee.
- 3.8 Under the Regulations, the Committee is required to:
(i) Make an initial determination that either there is no evidence of a breach of the Code, or that the Councillor/Co-opted Member should be given the opportunity to respond, either orally or in writing; and
(ii) If the Committee's initial determination is to give the Councillor/Co-opted Member the opportunity to respond, the Committee must then consider the Councillor's/Co-opted Member's representations and make a final determination.
- 3.9 The Committee's final determination, if required, must be one of the following:
(a) that there is no evidence of any breach of the Code of Conduct and therefore no further action needs to be taken;
(b) that the Member has breached the Code of Conduct but that no action needs to be taken in respect of that breach;
(c) that the Member has breached the Code of Conduct and should be censured, or
(d) that the Member has breached the Code of Conduct and should be suspended or partially suspended from being a Member of the authority for a period of up to six months.

- 3.10 After making its final determination, the Committee is required to give notice of its determination to the persons concerned and the Ombudsman and to produce and publish a report on the outcome of the investigation.
- 3.11 If the Committee finds a breach of the Code, the Councillor/Co-opted Member may apply to the Adjudication Panel for Wales within 21 days from receiving notice of the Committee's determination for permission to appeal. If permission to appeal is granted, the Adjudication Panel for Wales may either uphold the Committee's determination, recommend a different sanction to the Committee for reconsideration or overturn the Committee's determination.

4. MONITORING OFFICER'S RECOMMENDATIONS

- 4.1 The Regulations 2001 make certain provision regarding the procedure to be followed for the investigation and determination of Member misconduct complaints. Subject to any express provisions in these Regulations (or the Standards Committees (Wales) Regulations 2001), the procedure to be followed by a Standards Committee in exercising its functions under the Regulations is for the Committee to decide (Regulation 8).
- 4.2 As noted in paragraph 8 above, the Committee adopted a procedure for dealing with complaints referred by the Ombudsman in April 2011.
- 4.3 The procedure seeks to comply with:
- a. The Regulations; and
 - b. The principles of natural justice. In particular, it seeks to ensure that the hearing is fair and gives adequate opportunity for each party to present their case.
- 4.4 The procedure has been reviewed and a number of changes are recommended to reflect current legislative requirements, clarify procedures and ensure they remain fit for purpose. The proposed amendments to the current procedure are shown in **Appendix A** (marked up copy showing proposed amendments) and **Appendix B** (clean, formatted copy).

5. FINANCIAL IMPLICATIONS

There are no direct financial implications arising from this report.

6. LEGAL IMPLICATIONS

- 6.1 Members may wish to note that where a meeting of a Standards Committee or sub-committee is convened to consider a misconduct complaint referred by the Ombudsman, the statutory access to information rules (which apply to meetings of the Council and its committees and sub-committees under Part VA of the Local Government and Housing Act 1989) provide the following specific exemptions:

(i) There is no requirement to publish or make publicly available the agendas, reports, minutes or background papers connected to this matter until after the conclusion of the proceedings (after the appeal period ends or any appeal is concluded) – Regulation 26(2A) of the Standards Committee (Wales) Regulations 2001; and

(ii) The deliberations of the committee or sub-committee in reaching its findings; and any confidential information are exempt, if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information – Regulation 4 of the Standards Committees (Wales) Amendment Regulations 2007 and paragraphs 18A and 18C of Schedule 12A of the Local Government Act 1972.

6.2 The public may also be excluded from any meeting where exempt information is to be discussed. The categories of exempt information for these purposes includes information about an individual, provided the committee or subcommittee is satisfied that the public interest in exempting the information outweighs the public interest in disclosing it. This means that the Committee will be required to decide whether the hearing (or any part of it) should be conducted in public or private. The Councillor/Co-opted Member complained of will be given the opportunity to make representations on this point. However, as noted above, the Committee is required produce a report on the outcome of the investigation, which is to be published by the Monitoring Officer after the conclusion of the matter (Regulation 13 of the Local Government Investigations (Functions of Monitoring Officers and Standards Committees)(Wales) Regulations 2001).

6.3 Other relevant legal implications are set out in the body of the report.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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BACKGROUND PAPERS

PROCEDURES FOR DEALING WITH COMPLAINTS REFERRED TO THE
STANDARDS COMMITTEE BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES –
APPROVED APRIL 2011

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