



## **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)