



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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

Contents

Introduction

Consideration of the recommendations of the Review

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

Consultation questions

How to respond

Your rights

Further information and related documents

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

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

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

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

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.

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.

(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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

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

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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

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'

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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.

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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?

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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?

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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?

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

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
- download, complete our [response form](#) and post to:

Local Government Policy Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

- for (in certain circumstances) your data to be ‘erased’
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner’s Office (ICO) who is our independent regulator for data protection.

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

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

Data Protection Officer

Data Protection Officer
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

E-mail: data.protectionofficer@gov.wales

Information Commissioner’s Office

Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

Telephone: 01625 545 745 or 0303 123 1113

Website: ico.org.uk

UK General Data Protection Regulation (UK GDPR)

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

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

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).

Further information and related documents

Number: WG47012

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

This document may not be fully accessible.

For more information refer to our [accessibility statement](#).

This document was downloaded from GOV.WALES and may not be the latest version.

Go to <https://www.gov.wales/consultation-recommendations-independent-review-ethical-standards-framework-richard-penn-report> for the latest version.

Get [information on copyright](#).