

# Pecyn Dogfennau Cyhoeddus

## Pwyllgor Safonau

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Man Cyfarfod  
**Ystafell Bwyllgor A - Neuadd y Sir,  
Llandrindod, Powys**

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Dyddiad y Cyfarfod  
**Dydd Mercher, 3 Hydref 2018**

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Amser y Cyfarfod  
**10.00 am**

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I gael rhagor o wybodaeth cysylltwch â  
**Elizabeth Patterson**  
01597 826980  
elizabeth.patterson@powys.gov.uk



Neuadd Y Sir  
Llandrindod  
Powys  
LD1 5LG

Dyddiad Cyhoeddi

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Mae croeso i'r rhai sy'n cymryd rhan ddefnyddio'r Gymraeg. Os hoffech chi siarad Cymraeg yn y cyfarfod, gofynnwn i chi roi gwybod i ni erbyn hanner dydd ddau ddiwrnod cyn y cyfarfod

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## AGENDA

<b>1.</b>	<b>YMDDIHEURIADAU</b>
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I dderbyn ymddiheuriadau am absenoldeb.

<b>2.</b>	<b>COFNODION</b>
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I awdurdodi'r Cadeirydd i lofnodi cofnodion y cyfarfod a gynhaliwyd ar 27 Mehefin 2018 fel cofnod cywir.

(Tudalennau 1 - 4)

<b>3.</b>	<b>DATGANIADAU O DDIDDORDEB</b>
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I dderbyn unrhyw ddatganiadau o ddiddordeb gan Aelodau mewn perthynas ag eitemau i'w hystyried ar yr agenda.

<b>4.</b>	<b>ADRODDIAD GAN GYFREITHIWR Y CYNGOR</b>
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I dderbyn adroddiad gan Gyfreithiwr y Cyngor.

(Tudalennau 5 - 88)

<b>5.</b>	<b>CYNHADLEDD SAFONAU 2018 – GWEITHDY GWRANDAWIADAU SAFONAU – MATERION YMARFEROL.</b>
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I ystyried y cwestiynau “Beth fydddech chi’n ei wneud pe tai...” o’r gweithdy a drefnwyd gan Gyngor Sir Powys.

(Tudalennau 89 - 90)

**MINUTES OF A MEETING OF THE STANDARDS COMMITTEE HELD AT  
COMMITTEE ROOM A - COUNTY HALL, LLANDRINDOD WELLS, POWYS ON  
WEDNESDAY, 27 JUNE 2018**

PRESENT: Mrs H Rhydderch-Roberts (Chair)

Independent Members: Mrs C Jackson, Mrs J Evans, Mr S Hays and C Mulholland

County Councillors: S McNicholas, S Lewis and K S Silk

In attendance:

Ms D Jones (Deputy Monitoring Officer), Mr W Richards (Head of Democratic Services), Mrs L Patterson (Scrutiny Officer) and Ms C Johnson (Democratic Services Officer)

<b>1.</b>	<b>APOLOGIES</b>
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Apologies for absence were received from K M Roberts-Jones (County Councillor) and Mr C Pinney, Monitoring Officer.

<b>2.</b>	<b>MINUTES</b>
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The Chair was authorised to sign the minutes of the last meeting held on the 7 February 2018 as a correct record.

<b>3.</b>	<b>DECLARATIONS OF INTEREST</b>
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No declarations of interest were received.

<b>4.</b>	<b>REPORT OF THE SOLICITOR TO THE COUNCIL</b>
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The Committee received the report of the Solicitor to the Council (copy filed with signed minutes).

**A General Standards Issues for County Councillors and Co-opted Members**

**A1 Code of Conduct Training**

All Members and Co-opted Members have undertaken Code of Conduct training.

**A2 Mandatory Training**

Treasury Management is a mandatory training session. Members have had two opportunities to attend this training and there are thirteen members who have yet to undergo this training. A further session has been arranged for 20<sup>th</sup> July 2018.

<b>Resolved that:</b>	<b>Reason for recommendation:</b>
The Chair write to the 13 Members advising they are required to attend the Mandatory Treasury Management Development Session on 20 <sup>th</sup> July 2018.	To ensure compliance with the Council's policy regarding Mandatory Training.

## **B Referral of Councillors to Public Services Ombudsman**

### **B1 County Councillor Referrals**

02/CC/2017 Ombudsman investigating.  
 01/CC/2018 Ombudsman investigating  
 02/CC/2018 Ombudsman investigating  
 03/CC/2018 Complaint received – not investigating  
 04/CC/2018 Ombudsman deciding whether or not to investigate  
 05/CC/2018 Ombudsman investigating  
 06/CC/2018 Complaint received – not investigating  
 07/CC/2018 Complaint received – not investigating  
 08/CC/2018 Ombudsman deciding whether or not to investigate

## **C Dispensations**

### **C1 Applications - County Councillors**

No applications for dispensation had been received from County Councillors.

## **D Delegation for urgent matters**

There are only three meetings a year of the Standards Committee in the diary. Extraordinary meetings of Standards Committee may be called where urgent matters are required to be decided Members considered delegating authority to the Chair and Vice-Chair of Standards Committee together with the Monitoring Officer to take a holding decision pending confirmation of the position at the next Standards Committee. Decisions such as this will be limited to non-controversial applications for dispensation and it was stressed that if it was deemed necessary for a meeting to call this would happen.

<b>RESOLVED THAT:</b>	<b>REASON FOR RESOLUTION:</b>
Committee delegate non-controversial applications for dispensation to the Chair and Vice-Chair of the Standards Committee in consultation with the Monitoring Officer to grant a temporary dispensation subject to confirmation at Standards Committee for a trial period of	To allow applications for dispensation to be decided in a timely manner but confirmed at a meeting of the Standards Committee.

<b>one year</b>	
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## **E Late Payment of Expenses**

A claim for payment of expenses was submitted by Councillor Karen Laurie-Parry for mileage expenses (submitted on 15<sup>th</sup> April 2018 for October, November and December 2017).

The Committee approved this application (which was the first one for mileage made by this Member) and thanked the Member for the detailed explanation she had provided.

<b>RESOLVED THAT:</b>	<b>REASON FOR DECISION</b>
<b>i) the payment of the late claim submitted by Cllr Karen Laurie-Parry for mileage be paid for the period October, November and December 2017</b>	<b>To reimburse expenses incurred by Cllr K Laurie-Parry.</b>

## **F Ombudsman's Casebook**

The Ombudsman had published Code of Conduct Casebooks for the following period:

- October - December 2017
- January – March 2018

A copy of these Casebooks were attached at **Appendix A**.

## **G Annual Report from Adjudication Panel for Wales**

The Adjudication Panel for Wales (APW) had published its Annual Report for 2016/17 which can be accessed from the APW website.

## **H Adjudication Panel for Wales decision report**

In February 2018 the Adjudication Panel for Wales published a decision report in respect of Dr Stuart Anderson former Councillor for Conwy County Borough Council. The Adjudication Panel for Wales had received the matter as a referral from the Public Services Ombudsman for Wales and, having dealt with the matter at a Case Tribunal on 9<sup>th</sup> and 10<sup>th</sup> of January 2018. The outcome of the Tribunal was to disqualify Dr Anderson from being or becoming a Member of a relevant authority for a period of 18 months.

## **I Sanctions Guidance**

The Committee noted that the Adjudication Panel for Wales had published Sanctions Guidance setting out the approach to be taken in case, appeal and interim tribunals by the Adjudication Panel of Wales.

**J Standards Conference**

The Standards Conference will be co-hosted by Ceredigion County Council and Powys County Council on 14<sup>th</sup> September 2018. Members would be contacted for expressions of interest in attending the conference.

**K Meeting Dates**

To note dates of future meetings as follows:

Friday 14<sup>th</sup> September 2018 – Standards Conference Aberystwyth University

Wednesday 3<sup>rd</sup> October 2018 – Standards Committee

**Mrs H Rhydderch-Roberts (Chair)**

## CYNGOR SIR POWYS COUNTY COUNCIL.

Standards Committee  
3 October 2018

REPORT BY: Solicitor to the Council

SUBJECT: Standards Issues

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REPORT FOR: Decision, Information and Discussion

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**A. General Standards Issues for County Councillors and Co-opted Members**

**A1 Code of Conduct Training**

All Members and Co-Opted Members have undertaken Code of Conduct training.

**A2 Mandatory Training**

At the Treasury Management Development Session held on 20<sup>th</sup> July, 2018 there were a number of Members who did not complete the required training for 2017-18. During 2017-18 three sessions were held and Members were required to attend one of those sessions to complete the Mandatory Training for the year. The sessions were held on 14<sup>th</sup> July, 2017, 31<sup>st</sup> January, 2018 and 20<sup>th</sup> July, 2018.

Prior to the July, 2018 session 13 Members had not completed the required training. Following the July 2018 session 4 members had not completed the training. Of those 1 member (Councillor Jonathan Wilkinson) has been granted a leave of absence of 6 months by the Council and is therefore exempt from undertaking this development currently.

As required by the Council's policy relating to Mandatory Development, the Head of Democratic Services has written to those 3 remaining Members who did not complete their Mandatory Sessions and asked them for a written explanation or offered them the ability to make a verbal presentation to the Committee at its meeting on 3<sup>rd</sup> October, 2018. All three Councillors have responded (County Councillors Myfanwy Alexander, Mark Barnes and Neil Morrison).

The responses from Members are attached as **Appendix A**

A copy of the Council decision of 15<sup>th</sup> July, 2016 and the process is attached as **Appendix B**

<b>RECOMMENDATION:</b>	<b>REASON FOR RECOMMENDATION:</b>
<b>That the Committee provides its response to the comments of Members and determines what further action is to be taken in accordance with the Council's policy.</b>	<b>To ensure compliance with the Council's policy regarding Mandatory Training as approved on 15<sup>th</sup> July, 2015.</b>

## **B. Referral of Councillors to Public Services Ombudsman**

### **B1. County Councillor Referrals**

**B1.1** The current position regarding matters with the Ombudsman is as follows:

02/CC/2017	Ombudsman investigating
01/CC/2018	Ombudsman investigating
02/CC/2018	Ombudsman investigating
04/CC/2018	Ombudsman not investigating
05/CC/2018	Ombudsman investigating
08/CC/2018	Ombudsman deciding whether or not to investigate
09/CC/2018	Ombudsman deciding whether or not to investigate

## **C Dispensations**

### **C1 Applications - County Councillors**

No applications for dispensation have been received from County Councillors.

## **D Late Payment of Expenses**

One claim for late payment of expenses has been received from County Councillor Phil Pritchard for travel claims. A copy of the claim will be circulated at the meeting.

## **E Ombudsman's Casebook**

The Ombudsman has published Code of Conduct Casebooks for the following period:

- April – June 2018

A copy of these Casebook is attached at **Appendix C**

Back copies of the casebooks can be accessed from the website of the Public Services Ombudsman for Wales at:

<https://www.ombudsman.wales/code-of-conducts/>



## **F Adjudication Panel for Wales decision report**

In August 2018 the Adjudication Panel for Wales published a decision report in respect of former County Councillor for Monmouthshire (currently Community Councillor) Graham Down. The Adjudication Panel for Wales had received the matter as a referral from the Public Services Ombudsman for Wales and dealt with the matter at a Case Tribunal on 19 July, 2018. The outcome of the Tribunal was to suspend Community Councillor Down from acting as a member of Mathern Community Council for a period of two months or, if shorter, the remainder of his term of office. A copy of the report is attached at **Appendix D**.

## **G Adjudication Panel for Wales Sanctions Guidance**

The Adjudication Panel for Wales have published Sanctions Guidance setting out the approach to be taken in case, appeal and interim tribunals by the Adjudication Panel of Wales. This Sanctions Guidance is attached at **Appendix E**.

## **H Standards Conference – 14 September 2018**

To receive a verbal feedback from Members and Officers who attended the Conference.

## **I. Correspondence.**

To receive a letter from the President of the Adjudication Panel for Wales regarding Legal Member Recruitment. **Appendix F**

## **J. Meeting Dates**

The Council diary will be agreed at the Council meeting on 18 October, 2018 after which the dates will be circulated to the Committee.

Contact Officer Name:	Tel:	Fax:	Email:
Clive Pinney – Solicitor to the Council	01597 826746	01597 826220	<a href="mailto:clive.pinney@powys.gov.uk">clive.pinney@powys.gov.uk</a>

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

## **Standards Committee – 3<sup>rd</sup> October, 2018.**

### **Non-Attendance - Treasury Management Development Sessions**

At the Treasury Management Development Session held on 20<sup>th</sup> July, 2018 there were a number of Members who did not complete the required training for 2017-18. During 2017-17 three sessions were held and a Member was required to attend one of those sessions to complete the Mandatory Training for the year. The sessions were held on 14<sup>th</sup> July, 2017, 31<sup>st</sup> January, 2018 and 20<sup>th</sup> July, 2018.

As required by the Council's policy relating to Mandatory Development, the Head of Democratic Services has written to those Members who did not complete their Mandatory Sessions and asked them for a written explanation or offered them the ability to make a verbal presentation to the Committee at its meeting on 3<sup>rd</sup> October, 2018.

The responses from Members are included below:

#### **County Councillor Myfanwy Alexander.**

I could not attend the Treasury Management Committee due to other diary responsibilities. As I know you are aware, diary clashes are very difficult to manage and at times, ward work and Cabinet responsibilities make it impossible to do everything. I would be more than happy to undertake this training online.

#### **County Councillor Mark Barnes.**

Thank you for your email and it is with regret that I did not attend the recent mandatory training or the previous opportunities that I had to take the training.

20<sup>th</sup> July, 2018 – there was a need to find an alternative school for his son and an appointment came up at short notice at the new school on 20<sup>th</sup> July without there being an ability to find an alternative time or date.

31<sup>st</sup> January – Medical appointment.

14<sup>th</sup> July 2017 – family on holiday.

This was all just very bad luck and I am great supporter of Councillor training and would always attend.

I hope that you can accept my explanation but please feel free to get back in touch should you need any further information

#### **County Councillor Neil Morrison**

I am very sorry I missed all three mandatory development sessions on this topic, all three sessions clashed with my current full time job requirements and commitments which made it impossible to attend. I know this is not a satisfactory excuse, however

going forward I will make every effort to attend the next development session on this topic if you can give me a schedule where I can plan my commitments better.

## **Decision of County Council – 15<sup>th</sup> July, 2015**

### **11. MEMBER DEVELOPMENT – MANDATORY AND NON MANDATORY DEVELOPMENT - CC68 – 2015**

Council considered the recommendations of the Democratic Services Committee on mandatory and non-mandatory training.

In response to criticisms regarding the content and value of the development programme the Head of Democratic Services advised that Members should inform him of what they wanted from the programme. To respond to the needs of Members, mandatory development sessions from 2016 would be provided on two different days in different weeks and e-learning would be developed wherever possible.

It was proposed and duly seconded to delete paragraph 2.3 (iii) “Where a Member fails to attend/complete the required “mandatory development” in the timescale in ii] above they will be required to appear before Council to apologise and agree to complete the required development in a timescale required by the Standards Committee”

The motion was put to the vote and agreed.

#### **RESOLVED that:**

- i. Mandatory Development would be provided as detailed in the report, as amended. (See below)**
- ii. In future Council diaries, Mandatory Development sessions would be identified and each session would be provided twice per annum, so giving members options for attendance.**
- iii. Details of the cost of Mandatory Development sessions would be provided to Members.**
- iv. Attendance at Non-Mandatory Development sessions would be recorded but would not be monitored. Members would be expected to attend sessions to support them in their roles.**

**The report to the County Council set out the following process when a Member did not attend Mandatory Development Sessions.**

However, to ensure that “Mandatory development” is completed the MDWG and the Standards Committee recommended to the Democratic Services Committee and Council the following:

- i. Where a Member does not attend/complete a “Mandatory development” session they will receive an email from the Standards Committee advising them that they need to attend the next session. They will be given details of the session or how to access an appropriate session from another source and the required date for completion.**
- ii. Where a Member does not complete the second session they will be required to provide a verbal/written explanation of why they have failed to**

attend/complete the required development to the Standards Committee. The Standards Committee will require the Member to agree to complete the required “mandatory development” within a specified timescale.

- iii. (deleted by the Council)
- iv. If a Member continues to fail to attend/complete the required training the Standards Committee can suspend that Member for a period of up to one month. During this period the individual will not receive their allowance and will not be able to act as a Councillor.

The Standards Committee will however, take into account a Member’s individual circumstances when considering the above.

# The Code of Conduct Casebook

Issue 17 July 2018

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## Introduction

The Public Services Ombudsman for Wales considers complaints that members of local authorities in Wales have broken the Code of Conduct. The Ombudsman investigates such complaints under the provisions of Part III of the Local Government Act 2000 and the relevant Orders made by the National Assembly for Wales under that Act.

Where the Ombudsman decides that a complaint should be investigated, there are four findings, set out under section 69 of the Local Government Act 2000, which the Ombudsman can arrive at:

- (a) that there is no evidence that there has been a breach of the authority's code of conduct;
- (b) that no action needs to be taken in respect of the matters that were subject to the investigation;
- (c) that the matter be referred to the authority's monitoring officer for consideration by the standards committee;
- (d) that the matter be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal (this generally happens in more serious cases).

In the circumstances of (c) and (d) above, the Ombudsman is required to submit the investigation report to the standards committee or a tribunal of the Adjudication Panel for Wales and it is for them to consider the evidence found by the Ombudsman, together with any defence put forward by the member concerned. It is also for them to determine whether a breach has occurred and, if so, what

penalty (if any) should be imposed.

The Code of Conduct Casebook contains summaries of reports issued by this office for which the findings were one of the four set out above. However, in reference to (c) and (d) findings, The Code of Conduct Casebook only contains the summaries of those cases for which the hearings by the standards committee or Adjudication Panel for Wales have been concluded and the outcome of the hearing is known. This edition covers April to June 2018.



## Case summaries

### No evidence of breach

Merthyr Tydfil County Borough Council – Promotion of equality and respect

Case Number: 201704719 – Report issued in April 2018

An employee (“the Complainant”) of Merthyr Tydfil County Borough Council (“the Council”) complained that, at a staff meeting, an elected member of the Council (“the Councillor”) had made reference to some members of staff being “dead men walking”. The Complainant said that the Councillor made further comments which led some members of staff to conclude that this phrase referred to him. The Complainant said that this put him in fear for his job.

The Ombudsman investigated the complaint on the basis that the Councillor may have breached the paragraphs 4(b), 4(c), 6(1)(a) and 7(a) of the Code of Conduct for Members (“the Code”), relating to showing respect, bullying behaviour, disrepute and creating a disadvantage for others.

In the absence of any formal record of the meeting, the Ombudsman interviewed a selection of those present, as well as the Councillor, the Complainant and his manager. The Ombudsman considered what the Councillor said, his explanation of what he had meant and how his comments had been received.

The Ombudsman found that although the Councillor had used the phrase “dead men walking” there was no evidence to support the complaint that the comment was specifically directed at the Complainant or that it was intended to be seen as a threat to anybody’s job. The Ombudsman concluded that there was no evidence that the Councillor had breached the Code.

## No action necessary

### Chepstow Town Council – Disclosure and registration of interests

Case Number: 201703539 – Report issued in May 2018

A complaint was received that a member of Chepstow Town Council (“Councillor A”) had participated in discussions about the future ownership and management arrangements for a local public facility at a meeting of the Town Council, despite having declared a prejudicial interest in the matter.

The Ombudsman’s investigation found that it was likely that Councillor A had spoken at the meeting, despite having a prejudicial interest in the item, contrary to the requirements of paragraphs 14(1)(a), (c) and (e) of the Code of Conduct.

The Ombudsman decided that despite the fact the evidence suggested that there had been a breach of the Code, no further action should be taken. This was because Councillor A did not stand to gain personally from any decision made, the evidence suggested that he had withdrawn from the room for the vote, his preferred option was not agreed by the Council, and the Chair of the Council had indicated that he could speak. The Ombudsman did, however, remind Councillor A of his responsibilities in relation to prejudicial interests.

### Trellech United Community Council – Objectivity and propriety

Case number 201700946 – Report issued in April 2018

The Ombudsman received a complaint that a Councillor (“the Councillor”) of Trellech United Community Council (“the Council”) had breached the Code of Conduct for members. It was alleged that the Councillor had breached the Code when he wrote to an adjudicator of a competition, giving the impression that he was acting as a representative of the Council, in an attempt to negatively influence the chance of a specific entry winning the competition and thereby creating disadvantage for a member of the public who would benefit if that entry was successful.

The Ombudsman investigated whether the Councillor’s actions amounted to a breach of paragraph 7(a) of the Code of Conduct which states that members must not, in their official capacity or otherwise, use or attempt to use their position improperly to create a disadvantage for another person.

The Ombudsman found that the Councillor, by writing to the adjudicator with information intended to lessen the likelihood of that specific entry winning the competition and by signing off that correspondence as a Councillor, may have breached paragraph 7(a).

The Ombudsman noted, however, that the entry subsequently won the competition, so the Councillor’s intervention did not actually cause a disadvantage to the person in question. The Ombudsman concluded that, on balance, it was not in the public interest to refer the matter to a Standards Committee or Adjudication Panel for Wales and, therefore, no further action should be taken.

## Referred to Standards Committee

There are no summaries in relation to this finding

## Referred to Adjudication Panel for Wales

There are no summaries in relation to this finding

## More information

We value any comments or feedback you may have regarding The Code of Conduct Casebook. We would also be happy to answer any queries you may have regarding its contents. Any such correspondence can be emailed to [Matthew.Aplin@ombudsman-wales.org.uk](mailto:Matthew.Aplin@ombudsman-wales.org.uk) or sent to the following address:

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Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

Further information about the service offered by the Public Services Ombudsman for Wales can also be found at [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

## **DECISION REPORT**

**TRIBUNAL REFERENCE NUMBER:** APW/003/2017-018/CT

### **REFERENCE ABOUT ALLEGED BREACH OF THE CODE OF CONDUCT**

**RESPONDENT:** Former County Councillor (currently Community Councillor) Graham Down.

**RELEVANT AUTHORITIES:** Monmouthshire County Council (currently Mathern Community Council).

## **1. INTRODUCTION**

1.1 A Case Tribunal convened by the President of the Adjudication Panel for Wales has considered a reference in respect of the above Respondent.

1.2 A hearing was held by the Case Tribunal at 10.00am on 19<sup>th</sup> July 2018 at Cwmbran Magistrates Court, Tudor Road, Cwmbran, NP44 3YA. The hearing was open to the public.

1.3 Cllr Down attended and represented himself.

## **2. PRELIMINARY DOCUMENTS**

### **2.1 Reference from the Public Services Ombudsman for Wales**

2.1.1 In a letter dated 20<sup>th</sup> December 2017, the Adjudication Panel for Wales received a referral from the Public Services Ombudsman for Wales (“the Ombudsman”) in relation to allegations made against Cllr Down. The allegations were that Cllr Down had breached the code of conduct of Monmouthshire County Council (MCC) by failing to show respect and consideration for others by sending e-mails to the Chief Executive of MCC, Mr Paul Mathews, containing homophobic statements in alleged breach of Paragraph 4(b) of the code.

2.1.2 The Ombudsman’s investigation related to two sets of e-mails forwarded by the Respondent to the Chief Executive of MCC, the first set sent in February 2016 and the second in October 2016.

## **2.2 The Councillor's Written Response to the Ombudsman's Report and Reference**

2.2.1 Cllr Down forwarded a letter to the Ombudsman's Investigation Officer on 27<sup>th</sup> November 2017 in response to the Ombudsman's draft report. It was highly critical of that report and the delay in concluding it.

2.2.2 Cllr Down stated that there had been three conferences or events organised by MCC which had caused him concern in a period of little over six months and he said that he was "concerned at the direction of travel in these matters, and found arrangement of the events to be offensive and demonstrating a lack of respect to those [sic] faith or who object to these issues for any other reason."

2.2.3 He also made the points that the e-mails which formed the subject of the complaint were e-mails passing between two individuals which were not intended for a wider audience and that any distribution to others was none of his doing, being entirely the choice of the Chief Executive. He stated that he made no secret of his views about homosexuality and stated that he did not feel any embarrassment about the fact that: "I believe homosexuality to be unnatural, perverted, immoral and wrong." He stated that this was not only his view as it was also the traditional, mainstream teaching; "of virtually every major world religion."

2.2.4 In his letter, Cllr Down addressed various paragraphs of the Ombudsman's report in detail and the Case Tribunal had regard to these further views. He repeated that in his view; "both homosexual and paedophile acts are unnatural, perverted and immoral. In that sense both are, therefore, I contend, comparable in substance." He further stated; "I therefore stand by my comment without qualification."

2.2.5 Finally, Cllr Down stated that he would not use the language he used for addressing a wider audience or, specifically, someone of "homosexual persuasion" and that the language used must be seen in the context of the recipient of the message. He felt that it was not at all inappropriate that he should express himself in terms which reflected his strength of feeling.

2.2.6 On 26<sup>th</sup> January 2018, Cllr Down forwarded his reply to the Notice of Reference and again referred to his letter dated 27<sup>th</sup> November 2017. He contended that the Ombudsman had made a number of uncorroborated and speculative assumptions and that the investigation was; "based on a desire to reach a pre-determined conclusion." He also referred to freedom of expression, freedom of religious expression and also the public interest.

## **2.3 The Ombudsman's Written Representations**

No further representations were made by the Ombudsman.



### **3. APPLICATIONS MADE PRIOR TO HEARING/LISTING DIRECTION**

No applications were made further to the issue of standard Listing Directions on 10<sup>th</sup> May 2018.

### **4. APPLICATIONS MADE AND DIRECTIONS GIVEN DURING THE HEARING**

4.1 No formal applications were made during the hearing, although the Chairman acceded to Cllr Down's request to put relevant questions, through the Chairman, to the Ombudsman's representative regarding various aspects of the Ombudsman's report.

4.2 The Chairman explained that as there were no disputed material facts in this case, the first two stages of the proceedings would be conflated, namely resolution of facts and determination of whether there has been a failure to comply with the code of conduct. There were no objections from either party to this proposed course of action.

### **5. THE HEARING**

5.1. The Case Tribunal went on to hear oral evidence and submissions as follows:-

#### **Public Services Ombudsman for Wales – presentation of the investigation report**

5.1.1 In presenting the investigation report, the Ombudsman provided an overview of events, explaining that Cllr Down had not stood for re-election as a County Councillor in 2017, however had become a Community Councillor for Mathern Community Council. The complaint related to two sets of e-mail exchanges, one in February 2016 and the other in October 2016, comprising of a number of comments which were each considered by the Ombudsman's Investigator.

5.1.2 The Ombudsman's representative made it clear that the right to challenge Council spending was not being questioned. The Ombudsman was mindful of the European Convention on Human Rights, Article 10 being the right to freedom of expression; however, it was asserted that in this case, the level of inflammatory, offensive and abusive language crossed the line. In response to points of clarification, the Ombudsman's representative provided an explanation for the length of time taken to investigate this matter. The reasons for not pursuing investigation in relation to Paragraphs 4(a) and 6(1)(a) were also clarified.

**5.2 Witness: Mr Paul Mathews**, Chief Executive of Monmouthshire County Council gave evidence further to his statement dated 16<sup>th</sup> January 2017.

5.2.1 Mr Mathews stated that he had worked in public service for thirty years and had been Deputy Chief Executive or Chief Executive for fifteen years and had seen a lot in that time, however when he received the February e-mails from Cllr Down, he thought that they were totally at odds with what MCC was all about, albeit that he was not personally offended.

5.2.2 With regard to Cllr Down's comparison between homosexuality and paedophilia, he felt that this was an outrageous and abhorrent statement. He had pondered the matter; however he did not make a referral at that time and the matter was not handled internally at the time.

5.2.3 Due to the ethos of the Council, giving rights and opportunities to fulfil potential regardless of how people chose to live their lives and his duty of care as the Head of Paid Service, he considered it reasonable to set an appropriate tone and rhythm to the Council's work and he struggled to validate that with some of the comments made by Cllr Down.

5.2.4 It was Mr Mathews' view that Councillors can strongly challenge the Council's actions, however that there are rules within which they must operate. As a councillor, it is a privilege and an honour to represent all constituents and it is part of the role to promote the well-being of all. He did not make the referral lightly and had never previously made a referral, however following the second set of e-mails, he felt that Cllr Down's comments showed a pattern of behaviour, were unacceptable and needed to be addressed.

5.2.5 Mr Mathews said in evidence that he could receive several hundred e-mails in a day and these usually needed to be routed to another part of the organisation and he would have expected Cllr Down to have understood that. Cllr Down did not revert to him to object to the matter being referred. Mr Mathews accepted the need for humour on occasions, however in this instance a line had been crossed. He did not accept that the correspondence was private as it was addressed to the Chief Executive as representative of the organisation. In this case, the question raised by Cllr Down was forwarded, as was normal and routine, to the appropriate Cabinet Member with responsibility for equalities, who also happened to be openly gay.

5.2.6 Following questions from Cllr Down, Mr Mathews confirmed that Usk was Mr Mathews' 'normal' place of work as he spent the greatest proportion of his time, about 35%, in that locality. He also acknowledged that certain tragic events in Orlando, associated with homosexual community had been marked by the flying of the 'rainbow' flag at County Hall, whereas other atrocities had not been marked by the flying of the relevant national flags.

5.2.7 Mr Mathews confirmed that he had never previously had occasion to consider that Cllr Down had placed employees in a vulnerable position or dealt with them disrespectfully. He said in evidence that a person with certain religious beliefs would, as would any other candidate standing for election, need to reconcile themselves with undertaking to abide by the Councillors' code of conduct and if they could not do so, they should not stand for election.

5.2.8 Mr Mathews did not accept that referral was a ploy to get rid of Cllr Down and he stated that Cllr Down was not in a particular position of power and had a marginal role and the complaint was instigated purely by Cllr Down's use of language.

**5.3 The Respondent, Cllr Down** gave evidence as follows. The Case Tribunal had also read the relevant e-mails, the transcript of Cllr Down's interview of 24<sup>th</sup> August 2017 and Cllr Down's response to the Ombudsman's report dated 27<sup>th</sup> November 2017.

5.3.1 Cllr Down accepted that the exchange of e-mails was about Council business. He contended that the e-mails were private e-mails to the Chief Executive however and that it was the Chief Executive who had further circulated the e-mail. He also stressed that the Chief Executive was not personally offended by the comments. Cllr Down felt that Mr Mathews could have 'cut and pasted' e-mails so as not to send any part of them which the Chief Executive thought could cause offence.

5.3.2 He referred to a recent report of the Office for National Statistics. In terms of the sexual orientation of the population, 93.4% of the population described themselves as heterosexual. He said that if it is fair to describe a location where one spends only 35% of one's time as a 'normal' place of work, then it must be fairer to describe 93.4% of the population as 'normal.' He said that it was Mr Mathews who had read something into the term and nevertheless forwarded it on to the Cabinet Member.

5.3.3 Cllr Down was offended that the Council was promoting homosexuality and he argued that the Council had no duty to do so. Cllr Down asserted that he was not against individuals who are gay but that he disagreed with their lifestyle. By way of example, he explained that he had employed an openly gay person, who had been a valued member of his team, this was not to say that he approved of her lifestyle. Cllr Down found it wrong and deeply offensive as a tax-payer, that the Council should be seen to be promoting homosexuality. There had been three events within just over six months and he felt that 'his nose was being rubbed in it' and he said that he was not alone in believing this.

5.3.4 He said that his views had not changed and that it would be against his conscience to recant. Despite agreeing that people can do what they like in the privacy of their own homes, he did not expect it to be demonstrated in public and celebrated. He appreciated that paedophilia is unlawful, whereas homosexuality is lawful. Also children are not able to give consent whereas adults can do so. He believed that both were perverted and unnatural however.

5.3.5 Cllr Down explained that he was very angry at the time, however if he had been writing to a stranger or making a speech in Council, he might have used different terminology, although he would have said substantially the same thing. Following questions, he said that as an employer, he was aware of the provisions of the Equality Act 2010 and was aware of protected characteristics under the Act and the duty to treat people fairly and without discrimination. He continued to believe that he had done nothing wrong and, when pressed, was

not sure whether he would have made the 'paedophilia' comparison with the benefit of hindsight and would probably have chosen different words.

5.3.6 Cllr Downs agreed that he had not attended the training sessions referred to in the Ombudsman's report, however he noted that attendance generally at those training sessions had been low and that he had read and understood the code in any event.

## **Submissions**

### **5.4 Submissions by the representative of the Public Services Ombudsman for Wales.**

5.4.1. The Ombudsman's representative referred to relevant case-law with regard to Article 10 of the European Convention on Human Rights namely *Sanders v Kingston (No 1)* [2005] EWHC 1145 (Admin) and *R (Calver) v Adjudication Panel for Wales* [2012] EWHC 1172 (Admin) and in particular the three-stage approach as promulgated in the *Sanders* case. Reference was also made to an earlier decision of the Adjudication Panel for Wales in 2009 in relation to Cllr William A Pritchard of Barmouth Town Council where it was decided that there had been a breach of the Code when the Respondent made a comment, amongst others, that homosexuality was a 'notorious disability'. The Ombudsman's representative acknowledged that there were differences between the two cases. In the 'Barmouth' case, the comment was directed at an employee and had been disseminated widely by the Councillor and personal offence had been caused to an individual, unlike in the present case. The Ombudsman submitted however that the wording of Paragraph 4(b) was wide and it was not necessary to show that personal offence had been caused.

5.4.2 The Ombudsman was not questioning the right to personal or religious beliefs. It was the manner in which the views were expressed to the Chief Executive that was an issue as he had a duty of care towards a large workforce. The Ombudsman acknowledged that each case must be considered on its own merits, that a finding of breach would be an interference with Cllr Down's Article 10 rights, however in this case, it was submitted that the interference would be justified

5.4.3 The Ombudsman's representative submitted that within his e-mails, Cllr Down was conducting Council business as he had written in his capacity as a Councillor about public funding and public administration and the Ombudsman was of the view that the Code provisions were fully engaged.

5.4.4 There was no issue with Cllr Down's initial questions to the Chief Executive, which were entirely appropriate. It was submitted however that the e-mails became more egregious and, even bearing in mind the enhanced protection held as an elected member, the Ombudsman considered that the relevant e-mails were inflammatory and abusive. Reference to a "ridiculous rag" to describe the rainbow flag would cause offence to the homosexual community and others. Comparison between homosexuality and paedophilia was plainly offensive.

5.4.5 In the October e-mails it was clear from the context of the e-mails that Cllr Down was suggesting that anyone who was not 'normal' in the sense of being heterosexual, was abnormal. The Ombudsman's representative submitted that in conducting Council business, it could not be expected that the Chief Executive would redact Councillor e-mails and remove offensive material.

5.4.6 The Ombudsman's representative referred to the Ombudsman's Guidance as mentioned in Cllr Down's evidence in relation to senior officers requiring a thicker skin, however this was not the issue and was to do with the Chief Executive doing the right thing and standing up for his duties and the equalities legislation. If a person did not feel that they could sign up to the code of conduct then they shouldn't become a Member.

5.4.7 The Ombudsman considered that this was an unusual, but serious case. The Chief Executive had made the complaint via the Monitoring Officer and it was felt in the circumstances that it was neither practical nor easy for a Standards Committee to hear this case and that it would also be useful for Standards Committees generally to receive guidance from the Case Tribunal in view of the complex Convention issues in this case.

## **5.5 Submissions made by Cllr Down**

5.5.1 Cllr Down submitted that the Ombudsman had adduced no evidence to show that he had prevented officers from carrying out their functions in any way. He felt that the Ombudsman had tried to put words into his mouth and that they had carried out no work to find out the probability or otherwise of anyone being offended.

5.5.2 With regard to the February e-mails, the Ombudsman had accepted that there was nothing offensive in the e-mail sent on the 12<sup>th</sup> February 2016 at 11.22am and he had received no reply or objection to his e-mail sent at 15.01pm on the same date. It was only in relation to an e-mail in October that Mr Mathews used the word 'inappropriate'. In his further e-mail on 3<sup>rd</sup> October 2016 at 13.15pm, Cllr Down said that this was simply explaining the position and that it was more measured than his e-mail of 12<sup>th</sup> February 2016. If an e-mail was so offensive, then he queried why the Chief Executive would send it to someone who was openly gay.

5.5.3 Cllr Down referred to the Local Government Act 1988 Act and the repeal of the prohibition on promoting homosexuality and he said that MCC's Equality Policy referred to ensuring that there was no discrimination but did not refer to promotion of homosexuality and no resolution of the Cabinet had changed that. He felt that the conferences which had been organised were going further than treating people fairly, they were promoting homosexuality.

5.5.4 With regard to the ability to redact Members' e-mails, Cllr Down said that Chief Executives regularly received politically sensitive e-mails and needed to cut and paste information from time to time.

5.5.5 Cllr Down stated that the code of conduct refers to all Members, whether they are for or against homosexuality and he said that it was abundantly clear

that the Council, through its Cabinet Member with responsibility for equalities issues, was not treating those with religious views with any sort of consideration whatsoever and was blind to the fact that people may hold different views to them.

5.5.6 With regard to the reference to a 'ridiculous rag', he said that it was not unknown for Union Jack towels to be taken on holiday and for sun-tan lotion to be dropped onto them. To suggest that there is something magical about a flag which does not represent the Council and that you cannot 'take the mick out of it' is absurd. He did not consider that this reference was a breach of the code.

5.5.7 Cllr Down also referred to the Barmouth Town Council case which he said was very, very different. In that case, the Councillor's comments were contained in a letter to a third party, external to the Council and the onward transmission was an action of the Councillor, not an action of the Council. The only similarity was that it happened to deal with homosexuality.

5.5.8 Finally Cllr Down referred to the right to freedom of expression and the ability to impart ideas. He said that the only way in which the right could be removed was where just and where morality and the well-being of society required it and this was not the case here.

## **5.6 The Case Tribunal's assessment of the Witnesses**

5.6.1 The Tribunal found Mr Paul Mathews to be a considered and straightforward witness. He readily accepted that he had not had any cause for concern for Cllr Down's behaviour towards officers over many years previously. He readily accepted that Cllr Down had not referred his e-mails to any third party. He was less clear however as to why Cllr Downs had not been challenged or warned by Mr Mathews following the February exchange of e-mails.

5.6.2 Likewise the Tribunal found Cllr Downs to be a considered and straightforward witness. He did not waiver from his strongly held views whilst giving evidence. His evidence in relation to his use of the word 'normal' to denote 'the majority of people' however, was at odds with the context of the use of the word in his e-mail to the Chief Executive dated 1<sup>st</sup> October 2017.

## **6. FINDINGS OF FACT**

6.1 The facts were agreed and the Case Tribunal therefore found the following **undisputed** material facts;

6.1.1 At the relevant time, Councillor Down was a Member of MCC

6.1.2 Cllr Down is currently a Member of Mathern Community Council

6.1.3 Cllr Down signed an undertaking to observe the code of conduct of MCC on 8<sup>th</sup> May 2012.

6.1.4 Cllr Down forwarded e-mails to the Chief Executive of MCC on the 12<sup>th</sup> February 2016 and on the 1<sup>st</sup> to 13<sup>th</sup> October 2016, the contents of which are not in dispute.

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

### **7.1 Case Tribunal's Decision**

7.1.1 On the basis of the findings of fact and the evidence, the Case Tribunal found by a unanimous decision that Cllr Down had failed to comply with the code of conduct for Monmouthshire County Council as follows.

7.1.2 As well as looking at the e-mails as a whole, the Case Tribunal considered each of Cllr Down's e-mail comments which were alleged to contain homophobic statements in the light of the following.

7.1.3 Paragraph 4(b) of the code of conduct states;

"You must show respect and consideration for others".

The code is underpinned by certain principles. Paragraph 2(2) of the code of conduct states that; "You should read this code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales" (the Welsh Principles). The relevant principle states;

"Members must carry out their duties and responsibilities with due regard to the need to promote equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion, and show respect and consideration for others."

Paragraph 4(b) of the code must also be carefully considered in the light of the Articles of the European Convention on Human Rights however.

7.1.4 Article 8(1) of the Convention as embodied in the Human Rights Act 1998 states as follows:-

"Everyone has the right to respect for his private and family life,..."

7.1.4 Article 9 of the Convention states as follows:-

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

7.1.5 Article 10 of the Convention states as follows:-

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

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

7.1.6 In this context, the Case Tribunal referred to the cases of Calver, Sanders (No1) as well as Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin) which was within the knowledge of the Case Tribunal and followed the three-stage approach in Sanders (No 1) as follows:-

“1. Was the Case Tribunal entitled as a matter of fact to conclude that [Cllr Down’s] conduct was in breach of Paragraph [4(b)] of the code of conduct?

2. If so, was the finding in itself or the imposition of a sanction prima facie a breach of Article 10?

3. If so, was the restriction involved one which was justified by reason of the requirements of Article 10(2)?”

7.1.7 The Case Tribunal also noted the references to the Equality Act 2010 duties from the evidence and submissions. Under the Act, protected characteristics include sexual orientation. Section 149(5) states as follows:-

“Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to-

(a) Tackle prejudice, and

(b) Promote understanding.”

7.1.8 The Tribunal was mindful that Cllr Down’s comments had not been directed at any particular individual, however it considered that Paragraph 4(b) of the Code required respect and consideration to be shown by Councillors to others, whether this be an individual, a group or the electorate as a whole. It considered that Cllr Down’s e-mails had been directed to the Chief Executive who represented the Authority and the community as a whole and who, as Head of Paid Service, had a duty towards all staff.

7.1.9 The Tribunal was satisfied that the e-mails were sent to the organisation by Cllr Down in his official capacity as a representative of his community, as confirmed in his interview with the Ombudsman’s Investigating Officer. Moreover, the e-mails had not been sent as private and confidential documents,



Cllr Down was aware that they were, in some instances, being circulated more widely, yet he did not object at the time and it is also a fact that he had been willing to repeat these comments more widely and ultimately publicly in his letter to the Ombudsman dated 27<sup>th</sup> November 2017. Paragraph 4(b) was therefore engaged.

7.1.10 The Case Tribunal gave careful consideration to the right of freedom of thought, conscience and religion under Article 9 of the Convention. Within his e-mails, Cllr Down referred to being a Christian. In his letter dated 27<sup>th</sup> November 2017, Cllr Down had quoted from the Old Testament and referred to other religious teachings to justify his comments. The Tribunal accepted that on a wide reading, Article 9(1) was engaged, as some of Cllr Down's comments directly expressed one narrow element of his belief and could therefore be interpreted to be a manifestation of his religion or belief, such manifestation not being limited simply to acts of worship or devotion.

7.1.11 The Case Tribunal was satisfied in relation to Article 10(1) of the Convention that all relevant e-mail comments attracted full and enhanced protection afforded to politicians expressing their political views as they were all made in the context of public administration, including the use of Council property namely the flag-pole on Council premises, the organisation of Council conferences/events and the cost of such conferences/ events and Cllr Down's comments in connection with them were considered to be political expression in its widest sense.

## **7.2 Case Tribunal's Decision.**

The Case Tribunal therefore considered each relevant e-mail comment in the light of all of the above.

7.2.1 E-mail dated 12<sup>th</sup> February 2016 11:28 headed; "Monmouthshire Youth LBGXYZ Conference". Comments as follows:-

*"There seems to be some ridiculous multi-coloured rag flying from the flagpoles outside County Hall"*.

The Case Tribunal considered that Cllr Down's comment was disrespectful, however it accepted that, in the light of the enhanced protection for political expression, this flippant and impatient comment, despite being likely to be offensive to some, was not so egregious as to justify the restriction of Cllr Down's right to freedom of expression justifying a finding of a breach of the code. The Panel considered that this would have been the case even without enhanced protection.

7.2.2 E-mail dated 12<sup>th</sup> February 2016 15.01 Comments as follows:-

*"I am, and have been, always quite open that I agree with the teachings of just about every major world religion in that homosexuality is an immoral perversion to be condemned, not promoted"*.

The Case Tribunal was clear that these comments did not show respect and consideration for a section of society with protected characteristics under the Equality Act 2010.

The Tribunal carefully considered Cllr Down's rights under Articles 9(1) and 10(1) of the European Convention on Human Rights. Although the comments attracted enhanced protection as they comprised of political expression, the Tribunal considered that the comments were so unnecessary, offensive and egregious that they amounted to a blatant disregard for equality principles and legislation, the public interest in good administration and the duty of trust and confidence between all councillors and their Council's workforce. It was a deliberate challenge to the inclusive ethos of the Council and although not directed at a particular individual, the comments were an affront to the private life of a whole section of the community with protected characteristics, including staff and Members of MCC who also had the right to respect for their private and family lives by virtue of Article 8.

It concluded that, even having given a narrow construction to Articles 9(2) and 10(2) of the Convention, a finding of a breach of Paragraph 4(b) of the Code as underpinned by the Welsh Principles, was nevertheless "necessary in a democratic society...for the protection of the rights and interests of others." The comments were gratuitous and homophobic and in clear breach of Paragraph 4(b) of MCC's code of conduct.

7.2.3 Comments as follows:-

*"Indeed as a matter of straightforward logic I do not understand why a homosexual act is apparently acceptable but not a paedophile act. Both are unnatural and I struggle to see a difference of substance".*

The Case Tribunal considered that this comment demonstrated an extreme homophobic view which was wholly incompatible with the code and its underpinning Welsh Principles.

Although the comments attracted protection under Article 9(1) and full, enhanced protection under Article 10(1) of the European Convention on Human Rights, they demonstrated complete failure to show respect and consideration for others, including staff and Members of Monmouthshire County Council as well as the wider community with protected characteristics. It was the Tribunal's view that the comment which made a comparison between lawful relations and child abuse was outrageous, inflammatory, gratuitous and abhorrent. It consisted of a flagrant disregard for equality principles and the Equality Act 2010, the public interest in good administration and the duty of trust and confidence between all councillors and their Council's workforce. It deliberately challenged the inclusive ethos of the Council.

The Tribunal concluded that, even having given a narrow reading of Articles 9(2) and 10(2) of the Convention, a finding of a breach of Paragraph 4(b) of the Code as underpinned by the Welsh Principles, was nevertheless "necessary in a democratic society...for the protection of the rights and interests of others", and to uphold standards in public life.

7.2.4 E-mail dated 1<sup>st</sup> October 2016 20:24 headed 'LBGTQIYGVGI Conference. Comment as follows:-

*"I see that MCC apparently had yet another LBGTQIYGVGI conference yesterday, although there's still no sign of a similar conference for normal people".*

The Case Tribunal considered that Cllr Down's comment was pejorative and disrespectful, however it accepted that in the light of the enhanced protection for political expression that this provocative comment, despite being likely to be offensive to some, did not justify the restriction of Cllr Down's rights to freedom of expression so as to justify a finding of a breach of the code. Indeed the Panel considered that this would have been the case even without enhanced protection.

7.2.5 E-mail dated 1<sup>st</sup> October 2016 20:24 Comments as follows:-

*"I believe homosexuality, transgenderism, etc are immoral perversions. I do not accept the activities as being "normal" in any way".*

The Case Tribunal were clear that this comment did not show respect and consideration for a section of society with protected characteristics under the Equality Act 2010.

The Tribunal carefully considered Cllr Down's Convention rights and concluded that the comments attracted protection under Article 9(1) and full, enhanced protection under Article 10(1).

Despite having been challenged by Mr Matthews at the relevant time in this instance, Cllr Down repeated his view that 'the activities' were not normal, however on this occasion he linked the pejorative use of the word 'normal' to his view of the activities being 'immoral perversions' as opposed to being activities conducted by a minority of the population as Cllr Down argued in his submissions. In the circumstances, the Case Tribunal decided that, although the comments attracted full enhanced protection, they were wholly unnecessary, abusive and egregious and demonstrated complete failure to show respect and consideration for others, including staff and Members of Monmouthshire County Council as well as the wider community with protected characteristics. It was a deliberate and gratuitous challenge to the inclusive ethos of the Council, taking no account of equality principles, let alone the public sector equality duty.

It concluded that, even having given a narrow reading of Articles 9(1) and 10(2), a finding of a breach of Paragraph 4(b) of the code as underpinned by the Welsh Principles, was nevertheless "necessary in a democratic society...for the protection of the rights and interests of others."

7.2.6 E-mail dated 13<sup>th</sup> October 2016 8:28:55 headed 'Our recent exchanges' Comment as follows:-

*“Perhaps you would also be kind enough to let me know the difference in principle between flying the striped flag outside County Hall, even though that may offend some, and erecting a banner saying something like “homosexuality is perverted,” which may offend others”.*

The Case Tribunal considered that Cllr Down’s comment was disrespectful, however it accepted that in the light of the enhanced protection for political expression that this provocative yet rhetorical question, despite being likely to be offensive to some, did not justify the restriction of Cllr Down’s rights to freedom of expression justifying a finding of a breach of the code. Indeed the Panel considered that this would have been the case even without enhanced protection.

## **8. SUBMISSIONS ON ACTION TO BE TAKEN**

### **8.1 Evidence of previous conduct**

No evidence was produced of any previous breaches of the code of conduct by Cllr Down.

### **8.2 The Ombudsman’s submissions**

8.2.1 The Ombudsman contended that although Cllr Down was no longer a member of MCC, by virtue of Sections 79 (4) (a) and 79 (13) (b) of the Local Government Act 2000, the legislation allowed the Case Tribunal to suspend the Councillor from a different Authority to that in which the conduct occurred, in this case, Mathern Community Council. Cllr Down had become a Member of Mathern Community Council in May 2017.

8.2.2 The Ombudsman’s representative acknowledged that there may be mitigating factors, in that the code provisions to do with bringing the office or the Council into disrepute had not been invoked, that Cllr Down had co-operated with the investigation and that some of the comments had been made in the ‘heat of the moment’.

8.2.3 With regard to aggravating factors, the comments escalated following challenge by Mr Mathews. Although Cllr Down said that he had read and understood the code of conduct, his non-attendance of training on the code over the years showed a poor attitude to code matters and that there was a failure to look at a councillor’s role from a distance.

### **8.3 Cllr Down’s Submissions**

8.3.1 Cllr Down contended that he could not and would not recant and quoted Martin Luther on this point. He felt that the whole episode was bizarre and a breach of natural justice and he felt that there was a tacit understanding between chief executives and the Ombudsman’s office that investigations would be long and drawn-out. He felt that the delay was a sanction in itself.

8.3.2 He also stated that no-one had been offended by the e-mails and the Chief Executive had not been offended personally. The only person who had been offended was himself. He felt that blind assumptions had been made by MCC. As to the Chief Executive's duty to protect staff, it had been acknowledged that there was not a single example or incident of poor treatment of anyone by Cllr Down. He felt that the nub of this was that he was being expected to give up his faith and he would not do so.

### **8.3 Case Tribunal's Decision**

8.3.1 The Case Tribunal considered the nature of the three e-mails which were found to breach the code of conduct and in particular the comment which compared homosexuality to paedophilia. Cllr Down had reluctantly indicated that, in retrospect, he would 'probably' have used different words. They were not words used in the 'heat of the moment' however as having had ample time to reflect, he used similar wording and went on to justify the comments in his letter to the Ombudsman dated 27<sup>th</sup> November 2017.

8.3.2 In accordance with the Adjudication Panel for Wales' current Sanctions Guidance, the Case Tribunal also had regard to the following mitigating factors: that the breaches arose from a genuinely and strongly held view and that Cllr Down had a previous record of good service. It also had regard to the following aggravating factors: non-attendance of training with the October e-mail showing a repeat pattern of behaviour and a lack of remorse or insight. The Case Tribunal recognised that in other circumstances, this may have been a matter which would have been appropriate for Standards Committee hearing and therefore also took into account the upper limit of sanction for Standards Committees.

8.3.3 The Case Tribunal gave very careful consideration to all submissions on sanction and once again considered sanction in the light of Articles 9 and 10 and the principles of proportionality and although it found that the imposition of a sanction was a prima facie interference with the right to manifest one's religion or belief under Article 9 and freedom of expression under Article 10, it was proportionate and justified under Articles 9(2) and 10(2), as the breaches of the code had been gratuitous and egregious and was necessary to reinforce the fact that the code of conduct and Welsh Principles are key to the proper operation of and public confidence in local democracy. The Case Tribunal considered the least intrusive measure possible, without unacceptably compromising the achievement of the objective.

8.3.4 It has also considered Sections 79 (4) (a) and 79 (13) (b) of the Local Government Act 2000 in relation to sanction and it accepted the Ombudsman's submissions that suspension as well as disqualification were within the powers of the Case Tribunal.

8.3.5 The Case Tribunal had regard to sanctions in other cases. The 'Barmouth' case had led to disqualification for one year, however the Case Tribunal recognised that Cllr Down had not directed his behaviour towards a particular individual and wrote solely to the Chief Executive. In *Sanders v Kingston (No 2)* [2005] EWHC 2132 (Admin), Sullivan J considered that a

suspension of six months would have been appropriate in place of the disqualification for 18 months originally imposed by the relevant Tribunal. The Sanders (No 2) case involved a one-off incident of poor behaviour towards an officer.

8.3.6 Due to the mitigating factors described in Paragraph 8.3.2 above, the Case Tribunal considered that a short period of suspension would be proportionate and two months was considered to be the minimum sanction necessary, bearing in mind that many Town and Community Councils do not hold any formal Council meetings during August, whilst aiming to discourage the Respondent and any other Councillor from conducting himself/herself in a similar manner in future.

8.3.7 The Case Tribunal concluded by unanimous decision that Cllr Down should be suspended from acting as a member of Mathern Community Council for a period of two months or, if shorter, the remainder of his term of office.

8.3.8 MCC and Mathern Community Councils and their Standards Committee are notified accordingly.

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

## **9. CASE TRIBUNAL RECOMMENDATIONS**

9.1 Although this does not form part of the Case Tribunal's formal findings, the Case Tribunal would recommend that Cllr Down uses the two months' suspension to seek code of conduct and equalities training through MCC and Mathern Community Council and their Monitoring Officer.

Signed:



Date: 10 August 2018

Claire N Jones  
Chairman of the Case Tribunal

Susan Hurds  
Panel Member

Glenda Jones  
Panel Member

## Sanctions Guidance

Issued by the President of the Adjudication Panel for Wales under Section 75(10) of the Local Government Act 2000.

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### Foreword by the President

I am pleased to introduce our new *Sanctions Guidance* which sets out the approach to be taken by case, appeal and interim case tribunals of the Adjudication Panel for Wales in order to reach fair, proportionate and consistent decisions on the sanctions that should be applied in relation to an individual's breach of the local Code of Conduct.

The Guidance has been developed by members of the Adjudication Panel for Wales in consultation with the Public Services Ombudsman for Wales, Monitoring Officers and other interested parties. I would like to thank everyone for their contributions. In publishing this Guidance, I hope it will help all those with whom we share an interest in the Code - most importantly members of county and community councils, fire and rescue authorities, and national park authorities in Wales. I hope it reflects the importance we attach to the role of local members, the value of local democracy and the Adjudication Panel's commitment to promoting the highest standards in public life in Wales.

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

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## Introduction

1. This Guidance is issued by the President of the Adjudication Panel for Wales (APW) using powers available to her under the Local Government Act 2000<sup>1</sup>. Its primary purpose is to assist the APW's case, appeal and interim case tribunals when considering the appropriate sanction to impose on a member, or former member, who is found to have breached their authority's Code of Conduct.
2. This Guidance describes:
  - i. the role of the ethical framework and Code of Conduct in promoting high public standards amongst members of councils, fire and rescue authorities, and national park authorities in Wales;
  - ii. the role of the Adjudication Panel for Wales (APW) and the purpose of the sanctions regime;
  - iii. the approach to be taken by its tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of sanctions and this Guidance are built on the values that underpin the Code of Conduct, in particular the fundamental importance of promoting the highest standards in local public life. The Guidance aims to assist tribunals in determining sanctions that are, in all cases, fair, proportionate and consistent.
4. The Guidance is not prescriptive and recognises that the sanction decided by an individual tribunal will depend on the particular facts and circumstances of the case. Any examples should be considered to be by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider in addition to this Guidance other factors that they consider necessary and appropriate. Nor does the Guidance affect the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of relevant sections of this Guidance.
5. In setting out the factors to be considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparent approach for the benefit of all parties involved tribunal proceedings. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal is likely to arrive at its decision on sanction.
6. The Guidance seeks to fulfil a wider role and support all those with an interest in maintaining, promoting and adjudicating on the Code of Conduct. It aims to complement the statutory Guidance published by the Public Services Ombudsman for Wales<sup>2</sup>, confirming the expectations on local members in

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<sup>1</sup> Section 75(10) of the Local Government Act 2000 ("the 2000 Act") provides a power for the President of the Adjudication Panel for Wales to issue guidance on how its tribunals are to reach decisions

<sup>2</sup> The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils:

terms of their conduct and emphasising the central importance of public confidence in local democracy. It should be of value to individual members, Monitoring Officers and Standards Committees of county and county borough councils, fire and rescue authorities, and national park authorities in Wales, and the Public Services Ombudsman for Wales.

7. This Guidance comes into effect on 1 September 2018. It is a living document that will be updated and revised as the need arises, following consultation.

## Standards in Public Life

### The Code of Conduct

8. The Local Government Act 2000 introduced an ethical framework to promote high standards of conduct in public life in Wales. The framework's central mechanism is the Code of Conduct. All local authorities, community councils, fire and rescue authorities and national park authorities in Wales must have in place a Code of Conduct. All elected members and co-opted members (with voting rights) must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their term of office.
9. The Welsh Government has issued a model Code of Conduct<sup>3</sup> in order to ensure consistency across Wales and to give certainty to members and the public as to the minimum standards expected. The model Code is consistent with ten core principles of conduct<sup>4</sup> prescribed by the National Assembly for Wales in 2001, which are themselves derived from the Nolan Committee's Principles for Public Life<sup>5</sup>:
  - i. Selflessness
  - ii. Honesty
  - iii. Integrity and Propriety
  - iv. Duty to Uphold the Law
  - v. Stewardship
  - vi. Objectivity in Decision-making
  - vii. Equality and Respect
  - viii. Openness
  - ix. Accountability
  - x. Leadership

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Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

<sup>3</sup> The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2008, as amended by the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

[www.legislation.gov.uk/wsi/2016/84/pdfs/wsi\\_20160084\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf) and  
[www.legislation.gov.uk/wsi/2016/85/pdfs/wsi\\_20160085\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf)

<sup>4</sup> The Conduct of Members (Principles) (Wales) Order 2001 SI 2001 No.2276 (W.166)

[http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi\\_20012276\\_mi.pdf](http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf)

<sup>5</sup> Nolan Report "Standards of Conduct in Local Government in England, Scotland and Wales"

Local codes must incorporate any mandatory provisions of the model Code and may incorporate any optional provisions of the model Code. At this time, all provisions of the model Code are mandatory.

### **Expectations on local members**

10. Members of county councils, county borough councils, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
  - whenever they are acting or present at a meeting of their authority, claiming to act or giving the impression of acting in an official capacity in the role of member to which they were elected or appointed or as a representative of their authority;
  - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute, or if using or attempting to use their position to gain an advantage or avoid a disadvantage for anyone or if they misuse the authority's resources.
11. Members are expected to engage in any training and access ongoing advice, as the need arises, from their local Monitoring Officer and Standards Committee. Members are also expected to be familiar with and have regard to the Public Services Ombudsman's statutory guidance on the Code<sup>6</sup>. It addresses each of the Code's requirements in order to help members understand their obligations in practical terms. It offers advice on the fundamental ethical principles that many members need to consider on a regular basis – for example, declarations of interest, confidentiality and whether their actions constitute bullying or harassment– in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the Code and the Principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

### **Allegations of breach**

13. There are non-statutory local protocols in place for low-level member-on-member complaints which do not result in case or appeal tribunals. Allegations that a member's conduct is in breach of the Code can be made to the Ombudsman, who will decide whether to investigate a complaint. If, following an investigation, the Ombudsman finds that there is evidence of a breach of the Code, he can refer his report to the relevant local Standards Committee or to the President of the Adjudication Panel for Wales. The Ombudsman may also refer reports from an ongoing investigation to the President for consideration by an interim case tribunal.

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<sup>6</sup> The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016), issued by the Public Services Ombudsman for Wales under Section 68 of the Local Government Act 2000

## **The Adjudication Panel for Wales**

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales<sup>7</sup> as an independent, judicial body with powers to form tribunals to deal with alleged breaches of the Code. The Panel's operation is subject to regulation by the Welsh Government.

### ***Case tribunals***

15. Case tribunals are appointed by the President of the Adjudication Panel for Wales in order to consider a report from the Ombudsman following an investigation into an allegation of a member's misconduct. Case tribunals are responsible for deciding whether a local member has breached the Code of Conduct of their authority and, if so, for determining an appropriate sanction (if any).

### ***Appeal tribunals***

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may uphold and endorse any sanction imposed or refer the matter back to the Standards Committee with a recommendation as to a different sanction or overturn the determination of the Committee that there has been a breach of the Code. An appeal tribunal cannot recommend a sanction which was not available to the Standards Committee.

### ***Interim case tribunals***

17. Interim case tribunals are appointed by the President to consider a report, and any recommendation to suspend a member, from the Ombudsman during an ongoing investigation into alleged misconduct. The tribunal is responsible for determining the need to suspend, or partially suspend, the member or co-opted member from the authority or a role within the authority. The maximum duration of the suspension or partial suspension is 6 months. Unlike case and appeal tribunals, suspension by an interim case tribunal is a neutral act, given the ongoing nature of the Ombudsman's investigation.

## **The sanctions regime**

18. The Committee on Standards in Public Life<sup>8</sup> had a key role in developing the ethical framework and identified the need for mechanisms to enforce and punish public office holders who breached the standards expected of them, if the ethical framework was to command public credibility. The purpose of the sanctions available to Adjudication Panel for Wales case and appeal tribunals are to:

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<sup>7</sup> Part III, Local Government Act 2000

<sup>8</sup> Reference to the report on enforcement

- provide a disciplinary response to an individual member's breach of the Code;
- place the misconduct and appropriate sanction on public record;
- deter future misconduct on the part of the individual and others;
- promote a culture of compliance across the relevant authorities;
- foster public confidence in local democracy.

19. The sanctions available to a case tribunal that has found a breach of the Code are<sup>9</sup>:

- a. to take no action in respect of the breach;
- b. to suspend or partially suspend the member from the authority concerned for up to 12 months;
- c. to disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.

The sanctions available to an appeal tribunal that has found a breach of the Code are:

- d. censure;
- e. to suspend or partially suspend the member from the authority concerned for up to 6 months.

20. The different types and scope of duration of sanction are designed to provide tribunals with the flexibility to apply sanctions of considerable difference in impact and enable a proportionate response to the particular circumstances of an individual case. This Guidance does not propose a firm tariff from which to calculate the length of suspension or disqualification that should be applied to specific breaches of the Code. Instead, it offers broad principles for consideration by all tribunals whilst respecting the details that make each and every case different.

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<sup>9</sup> Section 79, Local Government Act 2000

## **The Tribunal approach – underlying principles**

21. Tribunals must always have in mind that every case is different and requires deciding on its own particular facts and circumstances. Following a finding that the Code of Conduct has been breached, tribunals must exercise their own judgment as to the relevant sanction in line with the nature and impact of the breach, and any other relevant factors. They must also ensure that the sanctions take account of the following underlying principles in order to ensure that their decisions support the overall ambitions of the ethical framework, fulfilling the purpose of the sanctions, and are in line with the tribunal's wider judicial obligations.

### **Fairness**

22. The tribunal should take account and seek to find an appropriate balance between the various interests of the Respondent/Appellant, the Complainant, other interested parties to a case, the Ombudsman, the authority, the electorate and the wider public.

### **Public interest**

23. Whilst seeking to ensure that the sanction imposed is appropriate, fair and proportionate to the circumstances of the case, the tribunal should consider the reputation of and public confidence in local democracy as more important than the interests of any one individual.

### **Proportionate**

24. Tribunals will take account of the good practice identified in the Ombudsman's Guidance and Code of Conduct Casebook<sup>10</sup> in order to assist their sense of proportionality when determining the sanction appropriate to the scale and/or nature of the breach.

### **Consistent**

25. Tribunals will aim to achieve consistency in their sanctions in order to maintain the credibility of the ethical framework. They will take account of the good practice identified by the Ombudsman (para.24) in addition to this Guidance and its own previous decisions. Where a tribunal panel has reason to depart from the Guidance, it should clearly explain why it has done so.

### **Equality and impartiality**

26. Fair treatment is a fundamental principle for the Adjudication Panel for Wales and is embedded within individual members' judicial oath. Tribunals must ensure that their processes and practices safeguard their capacity for objective, independent and impartial decision-making, free from prejudice and partiality, in order to uphold their judicial responsibilities.

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<sup>10</sup> <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

## Human Rights (Articles 6 and 10)

27. Tribunals must ensure that their processes and practices respect human rights. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Articles 6 and 10 of the European Convention on Human Rights in their deliberations. These articles enshrine the right to a fair hearing and freedom of expression.

28. Article 10 is a key provision when considering possible breaches of the Code. It provides that:

*“10(1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority regardless of frontiers...”*

*10(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

29. Enhanced protection of freedom of expression applies to political debate, including at local government level. Article 10(2) has the effect of permitting language and debate on questions of public interest that might, in non-political contexts, be regarded as inappropriate or unacceptable. This protection does not extend to gratuitous or offensive personal comment, nor to ‘*hate speech*’ directed at denigrating colour, race, disability, nationality (including citizenship), ethnic or national origin, religion, or sexual orientation.

30. In their consideration of Article 10, tribunals should apply the three-stage approach established by Mr Justice Wilkie<sup>11</sup> in the case of *Sanders v Kingston (No1)* and which applies to both decision about breach and sanction, as follows:

- i. Can the Panel as a matter of fact conclude that the Respondent’s conduct amounted to a relevant breach of the Code of Conduct?
- ii. If so, was the finding of a breach and imposition of a sanction *prima facie* a breach of Article 10?
- iii. If so, is the restriction involved one which is justified by reason of the requirement of Article 10(2)?

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<sup>11</sup> Wilkie J in the case of *Sanders v Kingston No (1)* [2005] EWHC 1145

## **Case and Appeal Tribunals – determining sanction**

31. A tribunal will decide whether or not a sanction is appropriate after considering the facts of a case and finding that an individual has breached the Code of Conduct. In determining any appropriate sanction, the tribunal's approach should be sufficiently broad so as to accommodate its consideration of the various interests of those involved in the case, any specific circumstances of the individual respondent/appellant, the intended purpose of the sanctions available (in particular, the wider public interest) and the tribunal's wider judicial responsibilities.
32. Case tribunals will decide on the appropriate sanction to impose, if any, and the duration of any such sanction; appeal tribunals will consider the appropriateness of the sanction imposed by the Standards Committee.

## **The five-stage process**

33. Case and appeal tribunals will follow a five step process in determining sanction:
- 33.1 assess the seriousness of the breach and any consequences for individuals and/or the council (para.34 - 38)
  - 33.2 identify the broad type of sanction that the Tribunal considers most likely to be appropriate having regard to the breach; (para.39)
  - 33.3 consider any relevant mitigating or aggravating circumstances and how these might affect the level of sanction under consideration; (para.40 to 42)
  - 33.4 consider any further adjustment necessary to ensure the sanction achieves an appropriate effect in terms of fulfilling the purposes of the sanctions; (para.43)
  - 33.5 confirm the decision on sanction and include, within the written decision, an explanation of the tribunal's reasons for determining the chosen sanction in order to enable the parties and the public to understand its conclusions. (para.53)

## **Assessing the seriousness of the breach**

34. The relative seriousness of the breach will have a direct bearing on the tribunal's decision as to the need for a sanction and, if so, whether a suspension or partial suspension (of up to 12 months) or disqualification (up to 5 years) is likely to be most appropriate. It is important to bear in mind though that appeal tribunals can only recommend a suspension (partial or full) for up to 6 months and cannot recommend disqualification due to the constraints upon its powers.
35. The tribunal will assess seriousness with particular reference to:
- the nature and extent of the breach, and number of breaches;



- the member’s culpability, their intentions in breaching the Code, and any previous breaches of the Code;
- the actual and potential consequences of the breach – for any individual(s), the wider public and/or the council as a whole;
- the extent to which the member’s actions have, or are likely to have the potential to, bring his/her office or the relevant authority into disrepute.

36. Examples of the way in which tribunals might weight seriousness include:

- a breach involving deliberate deception for personal gain or discrimination is likely to be regarded as more serious than that involving the careless use of a council email address on a personal social media profile;
- a breach involving the systematic harassment or bullying of a junior officer is likely to be regarded as more serious than instances of disrespectful language in the course of a council debate;
- a breach of confidentiality that results in the disclosure of the address of a looked after child is likely to be regarded as more serious than the disclosure of a planning officer’s confidential advice;
- a breach resulting in significant negative reputational damage to the office or authority is likely to be regarded as more serious than an inappropriately worded email to a member of the public.

37. Breaches involving the blatant disregard of specific, authoritative advice given as to a course of conduct and/or the Code (particularly by the relevant authority’s monitoring officer), the deliberate abuse of confidential, privileged or sensitive information for personal gain or that of a close personal associate, and sexual misconduct, criminal, discriminatory, predatory, bullying and/or harassing behaviour are all likely to be regarded as very serious breaches.

38. A member who is subject to a term of imprisonment for three months or more without the option of paying a fine in the previous five years before their election or since their election is automatically subject to disqualification<sup>12</sup>.

### Choosing the potential sanction

39. Having assessed the relative seriousness of the member’s breach of the Code, the tribunal will consider which of the courses of action available to it is most appropriate<sup>13</sup>. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact.

### No action

39.1 The tribunal may decide that, despite the member having failed to follow the Code of Conduct, there is no need to take any further action in terms of sanction. Circumstances in which a tribunal may decide that no action is required may include:

<sup>12</sup> Section 80(1)(d), Local Government Act 1972

<sup>13</sup> Section 79, Local Government Act 2000

- an inadvertent failure to follow the Code;
  - an isolated incident with extremely limited potential for consequential harm;
  - an acceptance that a further failure to comply with the Code on the part of the member is unlikely, nor are there any wider reasons for a deterrent sanction;
  - specific personal circumstances, including resignation or ill health, which render a sanction unnecessary and/or disproportionate.
- 39.2 A tribunal that finds a breach of the Code but decides that no action is necessary in terms of sanction, should consider whether there is a need to warn the member as to their conduct and/or seek assurances as to future behaviour. This provides an effective means of placing the member's behaviour on record, reflected in the tribunal's written decision, so that the warning and/or reassurance may be taken into account in the event of the same member being found to have breached the Code in the future. A failure to comply with any assurances given to the tribunal may be brought to the attention of the tribunal in any future hearings.

### ***Suspension for up to 12 months***

- 39.3 A case tribunal may suspend the member for up to 12 months from the authority(ies) whose Code/s has/have been breached.
- 39.4 Suspension is appropriate where the seriousness of the breach is such that a time-limited form of disciplinary response is appropriate in order to deter such future action, temporarily remove the member from the authority/a role within the authority, safeguard the standards set by the Code and to reassure the public that standards are being upheld.
- 39.5 A suspension of less than a month is unlikely to meet the objectives of the sanctions regime and risks undermining its overall ambitions. Tribunals are also reminded that the highest sanction available to local Standards Committees is 6 months' suspension. They should bear this in mind when considering an Ombudsman's referral to the Adjudication Panel, in preference to the local Standards Committee, and when considering an appeal against a local Standards Committee sanction. It is possible for appeal tribunals to recommend an increase in the sanction originally imposed by the Standards Committee.
- 39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:
- the member's action has brought the member's office or authority into disrepute but they have not been found in breach of any other paragraph of the Code (though the most appropriate sanction will depend on the specific facts of each case);

- the breach merits a disciplinary response but, in view of the circumstances of the case, it is highly unlikely that there will be a further breach of the Code;
- the member has recognised their culpability, shown insight into their misconduct, and apologised to those involved.

### ***Partial Suspension for up to 12 months***

- 39.7 The tribunal may impose a partial suspension, preventing the member from exercising a particular function or role (such as being a member of a particular committee or subcommittee or the holder of a particular office) for up to 12 months.
- 39.8 Partial suspension is appropriate where the seriousness of the breach merits a suspension (see above) but the circumstances of the case are such that the member is permitted to continue in public office except for the role/function/activity specifically limited by the suspension.
- 39.9 In the case of a partial suspension, the tribunal will need to decide from what role/function/activity the member is to be suspended and, in the case of membership of more than one authority, the impact of the partial suspension in each relevant authority.
- 39.10 Circumstances in which a partial suspension may be appropriate include:
- the member is capable of complying with the Code in general but has difficulty understanding or accepting the restrictions placed by the Code on their behaviour in a specific area of council/authority activity;
  - the misconduct is directly relevant to and inconsistent with a specific function or area of responsibility held;
  - the member should be temporarily removed or prevented from exercising executive functions for the body to which the Code applies.

### ***Disqualification for a maximum of 5 years***

- 39.11 A case tribunal may disqualify the member from being, or becoming, a member of the authority concerned or any other relevant authority to which the Code of Conduct applies for a maximum of 5 years.
- 39.12 Disqualification is the most severe of the sanctions available to a tribunal. It is likely to be appropriate where the seriousness of the breach is such that a significant disciplinary response is appropriate in order to deter repetition, make clear the unacceptable nature of such conduct in public office, underscore the importance of the Code and to safeguard the public's confidence in local democracy. A disqualification of less than 12 months is unlikely to be meaningful (except in circumstances when the term of office of the member is due to expire during that period or is no longer a member).

39.13 Circumstances in which a tribunal may decide that a disqualification is appropriate may include:

- deliberately seeking personal gain (for her/himself, a family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking to disadvantage another by exploiting membership of the authority and/or the authority's resources;
- deliberately disregarding or failing to comply with the provisions of the Code and continuing to assert the right so to do;
- repeatedly failing to comply with the provisions of the Code and demonstrating the likelihood of continuing the pattern of behaviour;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a second or subsequent breach, despite a warning and/or having given an assurance as to future conduct in a previous case before an Adjudication Panel for Wales tribunal;
- conduct that calls into question the Respondent's fitness for public office;
- bringing the relevant authority into serious disrepute.

#### **Mitigating and aggravating circumstances**

40. The tribunal will go on to consider how any particular circumstances of the member may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the member's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. This process is likely to have significant bearing on the duration of the sanction, varying the term down or up in line with the mitigating or aggravating factors. Such factors may at times be sufficient to persuade a tribunal that a suspension (if any) may be more appropriate than a disqualification, and vice versa.

41. Tribunals are encouraged to work through the examples set out below but are reminded that these are not exhaustive. Where any mitigating/aggravating factor relates directly to the nature or seriousness of the breach and the tribunal has already considered that factor in its choice of appropriate sanction, care should be taken as to the extent to which that factor is included in mitigation/aggravation. For example:

- if the sanction under consideration is a suspension because the conduct is regarded as a 'one off', this factor should not also be regarded as mitigating unless the 'one off' nature of the breach is so exceptional that it should have a direct bearing on the length of the suspension;

- if the breach is regarded as serious because it includes ‘bringing the authority into disrepute’, this factor should not also be regarded as aggravating unless the disrepute is so exceptional as to have a direct bearing on the length of the disqualification.

42. Tribunals should also take care to respect a member’s legitimate right to appeal and to distinguish protestations or assertions made in the course of exercising that right from those actions that might be regarded as aggravating factors designed to obstruct the processes of the Ombudsman or Adjudication Panel.

### *Mitigating circumstances*

- i. substantiated evidence that the misconduct was affected by personal circumstances, including health and stress;
- ii. a short length of service or inexperience in a particular role;
- iii. a previous record of good service (especially if over a long period of time);
- iv. the misconduct was a one-off or isolated incident;
- v. that the member was acting in good faith, albeit in breach of the Code;
- vi. the misconduct arose from provocation or manipulation on the part of others;
- vii. the breach arose from an honestly held, albeit mistaken, view that the conduct involved did not constitute a failure to follow the Code, especially having taken appropriate advice;
- viii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- ix. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see paragraphs 27-30 above and Aggravating factor xii below);
- x. self-reporting the breach;
- xi. recognition and regret as to the misconduct and any consequences;
- xii. an apology, especially an early apology, to any affected persons;
- xiii. co-operation in efforts to rectify the impact of the failure;
- xiv. co-operation with the investigation officer and the standards committee/APW;
- xv. acceptance of the need to modify behaviour in the future;
- xvi. preparedness to attend further training;
- xvii. commitment to seeking appropriate advice on the Code in the future;
- xviii. compliance with the Code since the events giving rise to the adjudication.

### **Aggravating factors**

- i. long experience, seniority and/or position of responsibility;
- ii. seeking to unfairly blame others for the member's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or close personal associate) benefit or disadvantage for another;
- iv. deliberate exploitation of public office and/or resources for personal (for her/himself, a family member or close personal associate) or political gain;
- v. abuse or exploitation of a position of trust;
- vi. repeated and/or numerous breaches of the Code, including persisting with a pattern of behaviour that involves repeatedly failing to abide by the Code;
- vii. dishonesty and/or deception, especially in the course of the Ombudsman's investigation;
- viii. lack of understanding or acceptance of the misconduct and any consequences;
- ix. refusal and/or failure to attend available training on the Code;
- x. deliberate or reckless conduct with little or no concern for the Code;
- xi. deliberately or recklessly ignoring advice, training and/or warnings as to conduct;
- xii. the expression of views which are not worthy of respect in a democratic society, are incompatible with human dignity and conflict with the fundamental rights of others (see paragraphs 27 – 30 above);
- xiii. obstructing and/or failing to co-operate with any Ombudsman's investigation, Standards Committee, and/or the Adjudication Panel for Wales's processes;
- xiv. refusal to accept the facts despite clear evidence to the contrary;
- xv. action(s) that has/have brought the relevant authority and/or public service into disrepute;
- xvi. failure to heed previous advice and/or warnings and to adhere to any previous assurances given as to conduct relevant to the Code.
- xvii. Previous findings of failure to follow the provisions of the Code.
- xviii. Continuing to deny the facts, despite clear evidence to the contrary.

### **Fulfilling the purpose of the sanctions regime**

43. The tribunal may need to consider further adjustments to the chosen sanction or length of sanction in order to achieve an appropriate deterrent effect, for the

individual and/or the wider council membership, or to maintain public confidence. Tribunals will also need to have regard to external factors that may exacerbate or diminish the impact of the chosen sanction.

### ***Public interest***

44. The overriding purpose of the sanctions regime is to uphold the standards of conduct in public life and maintain confidence in local democracy. Tribunals should review their chosen sanction against previous decisions of the Adjudication Panel for Wales and consider the value of its chosen sanction in terms of a deterrent effect upon councillors in general and its impact in terms of wider public credibility. If the facts giving rise to a breach of the code are such as to render the member entirely unfit for public office, then disqualification rather than suspension is likely to be the more appropriate sanction.

### ***Eligibility for public office in other relevant authorities***

45. Disqualification will automatically apply to a Respondent's current membership of all authorities to which the Local Government Act 2000 applies, irrespective of whether the other authorities' Codes have been breached. Disqualification will also prevent the Respondent from taking up public office, through election or co-option, on any other authorities to which the Act applies until the expiration of the disqualification period.

46. A suspension will preclude the member from participating as a member of the authority whose Code s/he has been found to have breached but not necessarily any other authorities of which the Respondent/Appellant is a member. Where the facts of a case call into question the member's overall suitability to public office, a disqualification may be more suitable than a suspension.

### ***Former members***

47. In circumstances where the tribunal would normally apply a suspension but the Respondent is no longer a member, a short period of disqualification may be appropriate (this can only apply in case tribunals). This will ensure that the Respondent is unable to return to public office, through co-option for example, sooner than the expiry of the period of suspension that would have been applied but for their resignation or not being re-elected. For appeal tribunals, a censure remains an option.

### ***Financial impact***

48. Tribunals should take into account the financial impact on members of a sanction: during suspension and disqualification, a member will be denied payment of their salary and allowances. The financial impact varies from an annual expenses reimbursement for community councillors to a basic salary

plus expenses for county councillors to the higher salaries paid to leaders of larger councils<sup>14</sup>.

### ***Impact on the electorate***

49. The High Court has recognised that Parliament has expressly provided case tribunals with a power to interfere with the will of the electorate and that such ‘interference’ may be necessary to maintain public trust and confidence in the local democratic process. Tribunals should be confident in their right to disqualify members whose conduct has shown them to be unequal to fulfilling the responsibilities vested in them by the electorate.
50. Suspension has the effect of temporarily depriving the electorate of local representation whereas disqualification triggers a process, either by-election or co-option, to replace the disqualified member.

### ***Timing of local elections***

51. In general, the length of a disqualification should be determined in relation to the nature of the breach and circumstances of the case, and be applied irrespective of the imminence or otherwise of local elections. There may be exceptional times when the duration of a disqualification might have a particularly disproportionate effect on the member. For example: a disqualification of 18 months, imposed in December 2020, would prevent a member from standing for local government election until May 2027, as the period of disqualification would overlap the May 2022 elections by one month. Tribunals should be willing to hear submissions as to why the length of disqualification should be varied, whilst bearing in mind the overriding public interest principle.

### ***Automatic disqualifications***

52. The law imposes an automatic disqualification for five years on any member who is subject to a term of imprisonment for three months or more (whether suspended or not). That a Court has imposed a lesser sanction does not mean that a five-year disqualification is inappropriate. If the case tribunal is of the view that the member concerned is unfit to hold public office and is unlikely to become fit over the next five years, then it may well be appropriate to impose such a disqualification.

### ***Confirming the sanction***

53. Tribunals should confirm their final determination on sanction, notifying the hearing and recording it in the decision notice. Tribunals will make sure that the reasons for their determination, including any significant mitigating and aggravating factors, are included in the full written record of proceedings in order to ensure that the parties and the public are able to understand its conclusions on sanction.

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<sup>14</sup> <http://gov.wales/irpwsb/home/?lang=en>



## Recommendations

54. Case tribunals also have the power to make recommendations<sup>15</sup> to the relevant authority whose Code it has considered about any matters relating to:

- the exercise of the authority's functions
- the authority's Code of Conduct;
- the authority's Standards Committee.

55. The authority to whom the recommendations are made is under a duty to consider them within three months and then prepare a report for the Ombudsman outlining what the action it, or its Standards Committee, has taken or proposes to take. If the Ombudsman is not satisfied with the action taken or proposed, he/she has the power to require the authority to publish a statement giving details of the recommendations made by the case tribunal and of the authority's reasons for not fully implementing them. As such, tribunals are advised to consider their use of this power with care.

## Interim case tribunals – determining sanction

56. Interim case tribunals will decide, after considering a report (including any recommendation) from the Ombudsman on an ongoing investigation into alleged misconduct, whether to suspend or partially suspend, the member or co-opted member from the authority or a role within the authority.

57. Unlike case and appeal tribunals, interim case tribunals are not disciplinary. Interim case tribunals aim to:

- facilitate the Ombudsman's effective and expeditious investigation of the respondent's conduct;
- minimise any disruption to the business of the authority concerned during the investigation;
- maintain the reputation of the authority concerned;
- protect the authority concerned from legal challenge.

58. The powers available to an interim case tribunal<sup>16</sup> are to suspend the Respondent, wholly or partially from being a member or co-opted member of the authority concerned, for not more than six months (or, if shorter, the remainder of the member's term of office). In the case of a partial suspension, the interim case tribunal will need to decide from what activity the respondent is to be suspended.

## Purpose and process

59. Interim case tribunals recognise that no definitive finding has yet been made on the validity of the allegations about the Respondent and that any form of suspension can have a significant impact on a member's role, credibility and finances.

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<sup>15</sup> Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

<sup>16</sup> Section 78(1), Local Government Act 2000

60. Interim case tribunals will therefore seek to take the minimum action necessary to ensure the effective completion of the investigation, the proper functioning of the authority concerned and the maintenance of public confidence. The tribunal will only decide on full suspension if its aims cannot be met otherwise.

### ***The nature of the allegation(s)***

61. Interim case tribunals will start by considering the nature of the allegations against the Respondent in order to decide whether, if the allegation were substantiated, a suspension or partial suspension would be an appropriate sanction.

### ***No action***

62. If the tribunal concludes that neither suspension nor partial suspension would follow a finding of breach, it is highly unlikely to make such an order without compelling reasons as to why the Ombudsman's investigation cannot effectively proceed without such action.

63. If the tribunal concludes that a finding on breach would result in a suspension or partial suspension, it will still require a compelling argument that it is in the public interest for a suspension or partial suspension of the Respondent in advance of the Ombudsman completing his investigation and referring a final report to the Adjudication Panel for Wales.

### ***Partial Suspension***

64. Partial suspension offers the possibility of safeguarding public confidence in an authority and enabling it to function effectively without depriving the member's constituents of ward representation. Interim case tribunals may wish to draw on the principles that apply to case and appeal tribunals' approach to partial suspension.

65. Partial suspension may be appropriate in circumstances where the allegations are directly relevant to and inconsistent with a specific function or area of responsibility held or the Respondent exercises executive functions for the authority whose Code s/he is alleged to have breached or— the Respondent may be excluded from their specific or executive responsibilities in order to reassure the public whilst not undermining the authority's ability to function effectively or depriving the electorate of their division/ward representation.

### ***Suspension***

66. Suspension is likely to be appropriate if there is a legitimate concern as to any of the following:

- the Respondent may interfere with evidence or with witnesses relevant to the matter under investigation;
- the business of the authority concerned cannot carry on effectively if the Respondent were to continue in office whilst the allegation against him or her

remained unresolved – the tribunal will have particular regard to any breakdown or potential breakdown in relations between the Respondent, other members and/or key staff of the authority;

- the allegations raise issues of such gravity that they jeopardise public confidence in the authority concerned if the Respondent were to continue in office whilst the allegations remained unresolved.

## **Annex: other documents and guidance relevant to tribunals**

Adjudication Panel for Wales : Members Handbook (2017)

Public Services Ombudsman for Wales –The Code of Conduct for members of county and county borough councils, fire and rescue authorities, and national park authorities: Guidance (August 2016) and The Code of Conduct for members of community councils: Guidance (August 2016)

Equal Treatment Bench Book, Judicial College (as amended)

The Adjudications by Case Tribunals and Interim Case Tribunals (Wales Regulations 2001 No. 2288 (W.176), as amended by the Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)

The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001 No. 2281 (W171), as amended by the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016 No. 85 (W.39)



PANEL DYFARNU CYMRU  
ADJUDICATION PANEL FOR WALES

## Canllaw ar Gosbau

Cyhoeddwyd gan Lywydd Panel Dyfarnu Cymru dan Adran 75(10) o Ddeddf  
Llywodraeth Leol 2000.

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### Rhagair gan y Llywydd

Mae'n bleser gennyf gyflwyno argraffiad newydd o'r *Canllaw ar Gosbau*. Mae'n egluro sut y bydd tribiwnlysoedd achos, tribiwnlysoedd apêl a thribiwnlysoedd achos interim Panel Dyfarnu Cymru yn gweithredu er mwyn gwneud penderfyniadau teg, cymesur a chyson ynglŷn â'r cosbau y dylid eu rhoi os yw unigolyn wedi torri'r Cod Ymddygiad Lleol.

Datblygwyd y canllaw gan aelodau o Banel Dyfarnu Cymru ar ôl ymgynghori ag Ombwdsmon Gwasanaethau Cyhoeddus Cymru, Swyddogion Monitro a phartïon eraill sydd â diddordeb. Hoffwn ddiolch i bawb am eu cyfraniadau. Rwy'n gobeithio y bydd y Canllaw hwn o gymorth i bawb arall sydd â diddordeb yn y Cod – yn fwyaf arbennig, aelodau o gynghorau sir a chymuned, awdurdodau tân ac achub ac awdurdodau parciau cenedlaethol yng Nghymru. Hyderaf ei fod yn dangos rôl bwysig aelodau lleol, gwerth democratiaeth leol ac ymrwymiad y Panel Dyfarnu i hyrwyddo safonau o'r radd flaenaf mewn bywyd cyhoeddus yng Nghymru.

**Claire Sharp**  
Llywydd Panel Dyfarnu Cymru

## CYNNWYS

### Cyflwyniad

tudalen 2

- statws, diben a defnydd arfaethedig y Canllaw, a sut y mae'n berthnasol i'r cyhoedd, aelodau unigol, Swyddogion Monitro a Phwyllgorau Safonau cynghorau, awdurdodau tân ac achub ac awdurdodau parciau cenedlaethol yng Nghymru, Ombwdsmon Gwasanaethau Cyhoeddus Cymru a Phanel Dyfarnu Cymru.

### Safonau mewn Bywyd Cyhoeddus

tudalen 3

- y Cod Ymddygiad, beth a ddisgwylir gan aelodau lleol a'r broses i'w dilyn pan honnir bod rhywun wedi torri'r Cod.

### Panel Dyfarnu Cymru

tudalen 5

- rôl Panel Dyfarnu Cymru, pwrpas y system gosbau a phwerau cosbi sydd ar gael i dribiwnlysoedd achos, tribiwnlysoedd apêl a thribiwnlysoedd achos interim Panel Dyfarnu Cymru.

### Dull Gweithredu'r Tribiwnlysoedd: egwyddorion sylfaenol

tudalen 7

- trosolwg o'r egwyddorion cyffredinol sy'n sail i ddull gweithredu cyffredinol tribiwnlysoedd achos, tribiwnlysoedd apêl a thribiwnlysoedd achos interim, yn fwyaf penodol, tegwch, budd y cyhoedd, cymesuredd, cysondeb, cydraddoldeb a didueddrwydd, ac Erthygl 10 o'r Confensiwn Ewropeaidd ar Hawliau Dynol.

### Tribiwnlysoedd Achos a Thribiwnlysoedd Apêl: pennu cosb

tudalen 9

- y cosbau penodol sydd ar gael i dribiwnlysoedd achos a thribiwnlysoedd apêl a'r broses bum cam a ddefnyddir i asesu difrifoldeb digwyddiad, amgylchiadau lliniarol a gwaethybol perthnasol ac unrhyw ffactorau ehangach, a chanllaw ar sut i bennu'r gosb benodol a'i hyd; rhoddir sylw hefyd i bŵer y tribiwnlys i wneud argymhellion.

### Tribiwnlysoedd Achos Interim: pennu cosb

tudalen 18

- nodau arbennig tribiwnlysoedd achos interim, sef hwyluso ymchwiliad sy'n cael ei gynnal, a'r pwerau penodol sydd ar gael mewn ymateb i adroddiad, ac unrhyw argymhelliad, gan yr Ombwdsmon.

### Atodiad: dogfennau a chanllawiau perthnasol eraill

tudalen 21

## Cyflwyniad

1. Cyhoeddir y Canllaw hwn gan Lywydd Panel Dyfarnu Cymru (PDC) gan ddefnyddio pwerau sydd ar gael iddi dan Ddeddf Llywodraeth Leol 2000<sup>1</sup>. Ei brif ddiben yw cynorthwyo tribiwnlysoedd achos, tribiwnlysoedd apêl a thribiwnlysoedd achos interim PDC pan fyddant yn ystyried y gosb briodol i'w rhoi i aelod, neu gyn aelod, y canfyddir ei fod wedi torri Cod Ymddygiad ei awdurdod.
2. Mae'r Canllaw hwn yn disgrifio:
  - i. rôl y fframwaith moesegol a'r Cod Ymddygiad wrth hyrwyddo safonau cyhoeddus uchel ymhlith aelodau o gynghorau, awdurdodau tân ac achub ac awdurdodau parciau cenedlaethol yng Nghymru;
  - ii. rôl Panel Dyfarnu Cymru (PDC) a phwrpas y system gosbau;
  - iii. sut y bydd tribiwnlysoedd PDC yn pennu cosb ar ôl canfod bod rhywun wedi torri'r Cod.
3. Mae'r cosbau sydd yn y Canllaw hwn yn seiliedig ar y gwerthoedd sy'n sail i'r Cod Ymddygiad, yn fwyaf arbennig, pwysigrwydd sylfaenol hyrwyddo safonau o'r radd flaenaf mewn bywyd cyhoeddus lleol. Mae'r Canllaw'n ceisio cynorthwyo tribiwnlysoedd i bennu cosbau sy'n deg, yn gymesur ac yn gyson ym mhob achos.
4. Nid yw'r Canllaw'n rhagnodol, ac mae'n cydnabod y bydd y gosb a bennir gan dribiwnlys unigol yn ddibynnol ar ffeithiau ac amgylchiadau arbennig yr achos. Enghreifftiau yn unig sydd yn y Canllaw, ac ni fwriadwyd iddo ddatgan beth fydd yn digwydd ym mhob achos. Y tribiwnlysoedd fydd yn gwneud y penderfyniad terfynol ynglŷn â chosbau. Yn ogystal â'r Canllaw hwn, gallant ystyried ffactorau eraill sydd yn eu barn hwy'n angenrheidiol ac yn briodol. Nid yw'r Canllaw ychwaith yn effeithio ar gyfrifoldeb yr aelod cyfreithiol o dribiwnlys i roi cyngor ar faterion cyfreithiol, gan gynnwys cymhwysedd penodol adrannau perthnasol o'r Canllaw hwn.
5. Drwy amlinellu'r ffactorau y dylai tribiwnlys eu hystyried wrth benderfynu ynglŷn â chosb briodol, mae'r Canllaw'n cynnig dull gweithredu tryloyw er budd pob parti sy'n rhan o achos tribiwnlys. Mae'n ceisio sicrhau bod pawb yn ymwybodol, o'r dechrau, sut mae'r tribiwnlys yn debygol o benderfynu ynglŷn â chosb.
6. Mae'r Canllaw'n ceisio cyflawni swyddogaeth ehangach a chefnogi pawb sydd â diddordeb mewn cynnal, hyrwyddo a gwneud penderfyniadau sy'n ymwneud â'r Cod Ymddygiad. Mae'n ceisio ategu'r Canllaw statudol a gyhoeddwyd gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru<sup>2</sup>, gan gadarnhau'r ymddygiad

<sup>1</sup> Mae Adran 75(10) o Ddeddf Llywodraeth Leol 2000 ("Deddf 2000") yn rhoi pŵer i Lywydd Panel Dyfarnu Cymru gyhoeddi canllaw yn nodi sut y dylai ei dribiwnlysoedd ddod i benderfyniad.

<sup>2</sup> Y Cod Ymddygiad ar gyfer aelodau cynghorau sir a chynghorau bwrdeistref sirol, awdurdodau tân ac achub, ac awdurdodau parciau cenedlaethol: Canllawiau (Awst 2016) a'r Cod Ymddygiad ar gyfer aelodau cynghorau

a ddisgwylir gan aelodau lleol a phwysleisio pwysigrwydd canolog hyder y cyhoedd mewn democratiaeth leol. Dylai fod yn ddefnyddiol i aelodau unigol, Swyddogion Monitro a Phwyllgorau Safonau cynghorau sir a chynghorau bwrdeistref sirol, awdurdodau tân ac achub, ac awdurdodau parciau cenedlaethol yng Nghymru, ac Ombwdsmon Gwasanaethau Cyhoeddus Cymru.

7. Bydd y Canllaw hwn yn dod i rym ar 1 Medi 2018. Mae'n ddogfen fyw a fydd yn cael ei diweddarau a'i diwygio yn ôl y galw, ar ôl ymgynghori.

## Safonau mewn Bywyd Cyhoeddus

### Y Cod Ymddygiad

8. Cyflwynodd Deddf Llywodraeth Leol 2000 fframwaith moesegol i hyrwyddo safonau ymddygiad uchel mewn bywyd cyhoeddus yng Nghymru. Trefniadau canolog y fframwaith yw'r Cod Ymddygiad. Rhaid i bob awdurdod lleol, cyngor cymuned, awdurdod tân ac achub ac awdurdod parc cenedlaethol yng Nghymru gael Cod Ymddygiad. Rhaid i bob aelod etholedig a phob aelod cyfetholedig (sydd â hawliau pleidleisio), lofnodi ymrwymiad wrth dderbyn ei swydd a fydd yn datgan y bydd yn cydymffurfio â Chod ei awdurdod drwy gydol ei gyfnod yn y swydd.
9. Mae Llywodraeth Cymru wedi cyhoeddi Cod Ymddygiad enghreifftiol<sup>3</sup> er mwyn sicrhau cysondeb ledled Cymru a rhoi sicrwydd i aelodau a'r cyhoedd ynglŷn â'r safonau sylfaenol a ddisgwylir. Mae'r Cod enghreifftiol yn gyson â'r deg egwyddor greiddiol ar gyfer ymddygiad<sup>4</sup> a ragnodwyd gan Gynulliad Cenedlaethol Cymru yn 2001. Mae'r egwyddorion hyn yn deillio o Egwyddorion Pwyllgor Nolan ar gyfer Bywyd Cyhoeddus<sup>5</sup>:
  - i. Anhunanoldeb
  - ii. Gonestrwydd
  - iii. Uniondeb a Gwedduster
  - iv. Dyletswydd i Gynnal y Gyfraith
  - v. Stiwardiaeth
  - vi. Gwrthrychedd wrth wneud Penderfyniadau
  - vii. Cydraddoldeb a Pharch
  - viii. Bod yn Agored
  - ix. Atebolrwydd
  - x. Rhoi Arweiniad

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cymuned: Canllawiau (Awst 2016), a gyhoeddwyd gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru dan Adran 68 o Ddeddf Llywodraeth Leol 2000

<sup>3</sup> Gorchymyn Llywodraeth Leol (Cod Ymddygiad Enghreifftiol) (Cymru) (Diwygio) 2008, fel y'i diwygiwyd gan Orchymyn Awdurdodau Lleol (Cod Ymddygiad Enghreifftiol) (Cymru) (Diwygio) 2016

[www.legislation.gov.uk/wsi/2016/84/pdfs/wsi\\_20160084\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/84/pdfs/wsi_20160084_mi.pdf) a

[www.legislation.gov.uk/wsi/2016/85/pdfs/wsi\\_20160085\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/85/pdfs/wsi_20160085_mi.pdf)

<sup>4</sup> Gorchymyn Ymddygiad Aelodau (Egwyddorion) (Cymru) 2001 OS 2001 Rhif 2276 (Cy.166)

[http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi\\_20012276\\_mi.pdf](http://www.legislation.gov.uk/wsi/2001/2276/pdfs/wsi_20012276_mi.pdf)

<sup>5</sup> Adroddiad Nolan "Standards of Conduct in Local Government in England, Scotland and Wales"



Rhaid i godau lleol gynnwys unrhyw ddarpariaethau gorfodol sydd yn y Cod enghreifftiol a gallent gynnwys unrhyw ddarpariaethau dewisol sydd ynddo. Ar hyn o bryd, mae holl ddarpariaethau'r Cod enghreifftiol yn orfodol.

### Yr hyn a ddisgwylir gan aelodau lleol

10. Rhaid i aelodau o gynghorau sir, cynghorau bwrdeistref sirol, cynghorau cymuned, awdurdodau tân ac achub ac awdurdodau parciau cenedlaethol yng Nghymru gydymffurfio â Chod eu hawdurdod:
  - pa bryd bynnag y maent yn gweithredu neu'n bresennol yn un o gyfarfodydd eu hawdurdod, yn hawlio eu bod yn gweithredu neu'n rhoi'r argraff eu bod yn gweithredu yn rhinwedd eu swydd fel aelod wedi'i ethol neu ei benodi neu fel cynrychiolydd eu hawdurdod;
  - unrhyw bryd, os ydynt yn ymddwyn mewn ffordd y byddai'n rhesymol ystyried eu bod yn dwyn anfri ar eu swydd neu eu hawdurdod, neu os ydynt yn defnyddio neu'n ceisio defnyddio eu swydd i gael mantais neu i osgoi anfantais i rywun neu os ydynt yn camdefnyddio adnoddau'r awdurdod.
11. Disgwylir i'r aelodau gymryd rhan mewn unrhyw hyfforddiant, a derbyn cyngor rheolaidd, yn ôl y galw, gan eu Swyddog Monitro a'u Pwyllgor Safonau Lleol. Disgwylir hefyd i'r aelodau fod yn gyfarwydd â chanllaw statudol yr Ombwdsmon Gwasanaethau Cyhoeddus ar y Cod<sup>6</sup> a rhoi sylw iddo. Mae'n ymdrin â phob un o ofynion y Cod er mwyn helpu'r aelodau i ddeall eu dyletswyddau o safbwynt ymarferol. Mae'n cynnig cyngor ar yr egwyddorion moesegol sylfaenol y mae angen i lawer o aelodau eu hystyried yn rheolaidd – er enghraifft, datganiadau buddiant, cyfrinachedd ac a allai eu gweithredoedd gael eu gweld fel bwlio neu aflonyddu – yn ogystal â'r egwyddorion nad ydynt yn codi mor aml.
12. Yn y pen draw, rhaid i'r aelodau ddefnyddio eu barn broffesiynol i gymhwyso'r Cod a'r Egwyddorion i'w sefyllfa hwy eu hunain. Nid yw'r Cod yn caniatáu iddynt ddirprwyo cyfrifoldeb am eu hymddygiad.

### Honiadau o dorri'r Cod

13. Mae protocolau lleol anstatudol wedi'u sefydlu ar gyfer cwynion lefel isel gan un aelod am aelod arall nad ydynt yn arwain at dribiwnlys achos na thribiwnlys apêl. Gellir cyflwyno honiadau bod ymddygiad aelod yn torri'r Cod i'r Ombwdsmon, a fydd yn penderfynu a ddylid ymchwilio i gŵyn ai peidio. Os bydd yr Ombwdsmon yn ymchwilio i gŵyn ac yn canfod bod tystiolaeth o dorri'r Cod, gall gyfeirio ei adroddiad at y Pwyllgor Safonau Lleol perthnasol neu at Lywydd Panel Dyfarnu Cymru. Gall yr Ombwdsmon hefyd gyfeirio adroddiadau o ymchwiliad sy'n cael ei gynnal at y Llywydd i gael eu hystyried gan dribiwnlys achos interim.

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<sup>6</sup> Y Cod Ymddygiad ar gyfer aelodau cynghorau sir a chynghorau bwrdeistref sirol, awdurdodau tân ac achub, ac awdurdodau parciau cenedlaethol: Canllaw (Awst 2016) a'r Cod Ymddygiad ar gyfer aelodau o gynghorau cymuned: Canllawiau (Awst 2016), a gyhoeddwyd gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru dan Adran 68 o Ddeddf Llywodraeth Leol 2000

## Panel Dyfarnu Cymru

14. Rhan o'r broses o gyflwyno'r fframwaith moesegol oedd sefydlu Panel Dyfarnu Cymru<sup>7</sup> fel corff barnwrol, annibynnol â phwerau i ffurfio tribiwnlysoedd i ymdrin ag achosion honedig o dorri'r Cod. Mae gweithrediad y Panel yn cael ei reoleiddio gan Lywodraeth Cymru.

### *Tribiwnlysoedd achos*

15. Penodir tribiwnlysoedd achos gan Lywydd Panel Dyfarnu Cymru er mwyn ystyried adroddiad gan yr Ombwdsmon yn dilyn ymchwiliad i honiad bod aelod wedi camymddwyn. Mae tribiwnlysoedd achos yn gyfrifol am benderfynu a yw aelod lleol wedi torri Cod Ymddygiad ei awdurdod, ac os yw, maent yn gyfrifol am bennu cosb briodol (os oes angen un).

### *Tribiwnlysoedd apêl*

16. Penodir tribiwnlysoedd apêl gan y Llywydd i ystyried apeliadau gan aelodau yn erbyn penderfyniad Pwyllgor Safonau Lleol. Mae tribiwnlysoedd apêl yn gyfrifol am adolygu penderfyniad bod aelod lleol wedi torri'r Cod Ymddygiad a pheidio â chydymffurfio ag unrhyw gosb a roddwyd. Gallant gefnogi a chadarnhau unrhyw gosb a roddwyd neu gyfeirio'r mater yn ôl i'r Pwyllgor Safonau gan argymhell cosb wahanol neu wyrdroi penderfyniad y Pwyllgor bod yr aelod wedi torri'r Cod. Ni all tribiwnlys apêl argymhell cosb nad yw ar gael i'r Pwyllgor Safonau.

### *Tribiwnlysoedd achos interim*

17. Penodir tribiwnlysoedd achos interim gan y Llywydd i ystyried adroddiad, ac unrhyw argymhelliad i atal aelod o'i swydd, sy'n cael ei wneud gan yr Ombwdsmon yn ystod ymchwiliad sy'n cael ei gynnal i achos honedig o dorri'r Cod. Mae'r tribiwnlys yn gyfrifol am benderfynu a oes angen atal yr aelod neu'r aelod cyfetholedig dros dro, neu ei atal dros dro yn rhannol, o'r awdurdod neu o swyddogaeth o fewn yr awdurdod. Uchafswm hyd y cyfnod o atal dros dro neu atal dros dro yn rhannol yw 6 mis. Yn wahanol i dribiwnlysoedd achos a thribiwnlysoedd apêl, mae atal dros dro drwy dribiwnlys achos interim yn weithred niwtral, gan fod ymchwiliad yr Ombwdsmon yn parhau.

## Y system gosbau

18. Roedd gan y Pwyllgor ar Safonau mewn Bywyd Cyhoeddus<sup>8</sup> ran allweddol yn y gwaith o ddatblygu'r fframwaith moesegol a nododd yr angen am fecanweithiau i orfodi a chosbi deiliaid swyddi cyhoeddus nad oeddent yn cydymffurfio â'r safonau a ddisgwyliid ganddynt, er mwyn i'r fframwaith moesegol ennyn hygredded y cyhoedd. Pwrpas y cosbau sydd ar gael i dribiwnlysoedd achos a thribiwnlysoedd apêl Panel Dyfarnu Cymru yw:

- darparu ymateb disgyblaethol i achos lle mae aelod unigol wedi torri'r Cod;
- gwneud cofnod cyhoeddus o'r camymddwyn a'r gosb briodol;

<sup>7</sup> Rhan III, Deddf Llywodraeth Leol 2000

<sup>8</sup> Cyfeiriad at yr adroddiad ar orfodi

- sicrhau nad yw'r unigolyn na neb arall yn camymddwyn yn y dyfodol;
- hybu diwylliant o gydymffurfio ar draws yr awdurdodau perthnasol;
- meithrin hyder y cyhoedd mewn democratiaeth leol.

19. Y cosbau sydd ar gael i dribiwnlys achos sydd wedi canfod bod rhywun wedi torri'r Cod yw<sup>9</sup>:

- a. peidio â chymryd unrhyw gamau mewn perthynas â'r achos o dorri'r Cod;
- b. atal yr aelod dros dro o'r awdurdod dan sylw, neu ei atal dros dro yn rhannol, am hyd at 12 mis;
- c. anghymhwyso'r aelod rhag bod yn aelod o'r awdurdod dan sylw, neu rhag dod yn aelod ohono yn y dyfodol, neu o unrhyw awdurdod perthnasol arall y mae'r Cod Ymddygiad yn berthnasol iddo am uchafswm o 5 mlynedd.

Y cosbau sydd ar gael i dribiwnlys apêl sydd wedi canfod bod rhywun wedi torri'r Cod yw:

- d. ceryddu;
- e. atal yr aelod o'r awdurdod dan sylw dros dro, neu ei atal dros dro yn rhannol, am hyd at 6 mis.

20. Mae'r cosbau'n amrywio o ran math a hyd er mwyn rhoi'r hyblygrwydd i dribiwnlysoedd ddefnyddio cosbau sy'n amrywio'n fawr o ran eu heffaith a'u galluogi i ymateb yn gymesur i amgylchiadau arbennig achos unigol. Nid yw'r Canllaw hwn yn cynnig tariff pendant i'w ddefnyddio i gyfrifo hyd y cyfnod o atal dros dro neu anghymhwyso a ddylai fod yn berthnasol i achosion penodol o dorri'r Cod. Yn hytrach, mae'n cynnig egwyddorion cyffredinol i'w hystyried gan bob tribiwnlys gan barchu'r manylion sy'n gwneud pob achos unigol yn wahanol.

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<sup>9</sup> Adran 79, Deddf Llywodraeth Leol 2000

## **Dulliau gweithredu Tribiwnlysoedd – egwyddorion sylfaenol**

21. Rhaid i dribiwnlysoedd gadw mewn cof bob amser bod pob achos yn wahanol a bod angen gwneud penderfyniad ar sail ffeithiau ac amgylchiadau penodol pob achos unigol. Ar ôl canfod bod rhywun wedi torri'r Cod Ymddygiad rhaid i dribiwnlysoedd benderfynu drostynt eu hunain beth yw'r gosb berthnasol gan ddibynnu ar natur yr achos a pha effaith y mae wedi'i gael, ac unrhyw ffactorau perthnasol eraill. Rhaid iddynt hefyd sicrhau bod y cosbau'n ystyried yr egwyddorion sylfaenol a ganlyn er mwyn sicrhau bod eu penderfyniadau'n cefnogi uchelgeisiau cyffredinol y fframwaith moesegol, gan gyflawni diben y cosbau, a'u bod yn unol â rhwymedigaethau barnwrol ehangach y tribiwnlys.

### **Tegwch**

22. Dylai'r tribiwnlys ystyried a cheisio cael cydbwysedd priodol rhwng buddiannau amrywiol yr Ymatebydd/Apelydd, yr Achwynydd, partïon eraill sydd â budd mewn achos, yr Ombwdsmon, yr awdurdod, yr etholwyr a'r cyhoedd yn ehangach.

### **Budd y cyhoedd**

23. Tra'n ceisio sicrhau bod y gosb a roddir yn briodol, yn deg ac yn gymesur ag amgylchiadau'r achos, dylai'r tribiwnlys ystyried bod enw da democratiaeth leol a hyder y cyhoedd mewn democratiaeth leol yn bwysicach na buddiannau unrhyw unigolyn.

### **Cymesuredd**

24. Bydd tribiwnlysoedd yn ystyried yr arferion da a nodwyd yng Nghanllawiau a Choflyfr Cod Ymddygiad yr Ombwdsmon<sup>10</sup> er mwyn eu cynorthwyo â'u hymdeimlad o gymesuredd wrth benderfynu ar gosb sy'n briodol i faint a/neu natur y tramgwydd.

### **Cysondeb**

25. Bydd y tribiwnlysoedd yn ceisio cael cysondeb rhwng eu cosbau er mwyn cynnal hygredd y fframwaith moesegol. Byddant yn ystyried yr arferion da a nodwyd gan yr Ombwdsmon (para.24) yn ogystal â'r Canllaw hwn a'u penderfyniadau blaenorol eu hunain. Os oes gan banel tribiwnlys reswm dros wro oddi wrth y Canllaw, dylai egluro'n glir pam y mae wedi gwneud hynny.

### **Cydraddoldeb a didueddrwydd**

26. Mae trin pawb yn deg yn un o egwyddorion sylfaenol Panel Dyfarnu Cymru ac mae'n rhan o'r llw barnwrol sy'n cael ei dyngu gan aelodau unigol. Rhaid i dribiwnlysoedd sicrhau bod eu prosesau a'u harferion yn diogelu eu capasiti i wneud penderfyniadau gwrthrychol, annibynnol a diduedd, heb unrhyw ragfarn na ffafiaeth, er mwyn cadarnhau eu cyfrifoldebau barnwrol.

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<sup>10</sup> <http://www.ombudsman-wales.org.uk/en/publications/The-Code-of-Conduct-Casebook.aspx>

## Hawliau Dynol (Erthyglau 6 a 10)

27. Rhaid i driwlynlysoedd sicrhau bod eu prosesau a'u harferion yn parchu hawliau dynol. Mae'r Canllaw hwn yn ceisio cefnogi'r egwyddorion hynny. Yn fwyaf arbennig, rhaid i driwlynlysoedd sicrhau eu bod yn ystyried perthnasedd Erthyglau 6 a 10 o'r Confensiwn Ewropeaidd ar Hawliau Dynol yn eu trafodaethau. Mae'r erthyglau hyn yn cynnwys yr hawl i wrandawriad teg a rhyddid mynegiant.

28. Mae Erthygl 10 yn ddarpariaeth allweddol wrth ystyried achosion posibl o dorri'r Cod:

*“10(1) Mae gan bawb yr hawl i ryddid mynegiant. Rhaid i'r hawl hon gynnwys rhyddid i arddel barnau ac i gael a rhannu gwybodaeth a syniadau heb ymyrraeth gan awdurdodau cyhoeddus a heb ystyried ffiniau ...*

*10(2) Gall arfer y rhyddid hwn, gan fod dyletswyddau a chyfrifoldebau'n cydfynd ag ef, fod yn amodol ar ffurfioldebau, amodau, cyfyngiadau neu gosbau a ragnodir gan y gyfraith ac sy'n angenrheidiol mewn cymdeithas ddemocrataidd, er lles diogelwch cenedlaethol, uniondeb tiriogaethol neu ddiogelwch y cyhoedd, i atal troseddau ac anhrefn, i ddiogelu iechyd neu foesau, i ddiogelu enw da neu hawliau pobl eraill, i atal datgelu gwybodaeth a gafwyd yn gyfrinachol, neu i gynnal awdurdod a didueddrwydd y farnwriaeth.”*

29. Mae mesurau diogelu ychwanegol ar gyfer rhyddid mynegiant mewn dadleuon gwleidyddol, gan gynnwys dadleuon mewn llywodraeth leol. Mae Erthygl 10(2) yn caniatáu iaith a dadl ar faterion o ddiddordeb i'r cyhoedd a allai, mewn cydestun anwleidyddol, gael ei hystyried yn amhriodol neu'n annerbyniol. Nid yw'r diogelwch hwn yn cynnwys sylwadau personol di-alw-amdanynt neu dramgwyddus, nac *'iaith sy'n ennyn casineb'* drwy enllibio lliw, hil, anabled, cenedligrwydd (gan gynnwys dinasyddiaeth), gwreiddiau ethnig neu genedlaethol, crefydd neu gyfeiriadedd rhywiol.

30. Wrth ystyried Erthygl 10, dylai driwlynlysoedd ddefnyddio'r dull tri cham a sefydlwyd gan Meistr Ustus Wilkie<sup>11</sup> yn achos *Sanders v Kingston (Rhif 1)* ac sy'n berthnasol i benderfyniadau yn ymwneud â thorri amodau a chosbau, fel a ganlyn:

- i. A all y Panel fel mater o ffaith ddod i'r casgliad bod ymddygiad yr Ymatebydd yn achos perthnasol o dorri'r Cod Ymddygiad?
- ii. Os yw, a oedd yr achos o ganfod tor-amod a rhoi cosb ar yr olwg gyntaf yn achos o weithredu'n groes i Erthygl 10?
- iii. Os oedd, a yw'r cyfyngiad dan sylw yn un sy'n cael ei gyfiawnhau drwy'r gofyniad yn Erthygl 10(2)?

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<sup>11</sup> Wilkie J yn achos *Sanders v Kingston Rhif (1)* [2005] EWHC 1145

## **Tribiwnlysoedd Achos a Thribiwnlysoedd Apêl – pennu cosb**

31. Bydd tribiwnlys yn penderfynu a yw cosb yn briodol ai peidio ar ôl ystyried ffeithiau achos a chanfod bod unigolyn wedi torri'r Cod Ymddygiad. Wrth bennu cosb briodol, dylai dull gweithredu'r tribiwnlys fod yn ddigon eang i'w alluogi i ystyried buddiannau amrywiol y rhai sy'n ymwneud â'r achos, unrhyw amgylchiadau penodol sydd gan yr ymatebydd/apelydd unigol, diben arfaethedig y cosbau sydd ar gael (yn fwyaf arbennig, y budd i'r cyhoedd yn ehangach) a chyfrifoldebau barnwrol ehangach y tribiwnlys.
32. Bydd tribiwnlysoedd achos yn penderfynu ynglŷn â'r gosb briodol i'w rhoi, os oes angen rhoi cosb, a hyd unrhyw gosb o'r fath; bydd tribiwnlysoedd apêl yn ystyried priodoldeb y gosb a roddir gan y Pwyllgor Safonau.

## **Y broses bum cam**

33. Bydd tribiwnlys achos a thribiwnlys apêl yn dilyn proses bum cam wrth bennu cosb:
- 33.1 asesu difrifoldeb y tor-amod ac unrhyw ganlyniadau i unigolion a/neu'r cyngor (para.34 - 38)
  - 33.2 nodi'r math cyffredinol o gosb y mae'r Tribiwnlys yn credu ei bod yn fwyaf tebygol o fod yn briodol o ystyried y tor-amod; (para.39)
  - 33.3 ystyried unrhyw amgylchiadau lliniarol neu waethybol perthnasol a sut y gallai'r rhain effeithio ar lefel y gosb sy'n cael ei hystyried; (para.40 i 42)
  - 33.4 ystyried unrhyw addasiad pellach sydd ei angen er mwyn sicrhau bod y gosb yn cael effaith briodol, o ran cyflawni dibenion y gosb; (para.43)
  - 33.5 cadarnhau'r penderfyniad ynglŷn â chosb a chynnwys eglurhad, gyda'r penderfyniad ysgrifenedig, o resymau'r tribiwnlys dros benderfynu ynglŷn â'r gosb a ddewiswyd er mwyn galluogi'r partïon a'r cyhoedd i ddeall ei gasgliadau. (para.53)

## **Asesu difrifoldeb y tor-amod**

34. Bydd difrifoldeb cymharol y tor-amod yn cael effaith uniongyrchol ar benderfyniad y tribiwnlys ynglŷn â'r angen am gosb ac, os hynny, pa un ai atal dros dro, neu atal dros dro yn rhannol (am hyd at 12 mis), neu anghymhwyso (am hyd at 5 mlynedd) sy'n debygol o fod yn fwyaf priodol. Er hyn, mae'n bwysig cadw mewn cof mai'r unig beth y gall tribiwnlys apêl ei wneud yw argymell atal dros dro (yn rhannol neu'n llawn) am hyd at 6 mis, a bod y cyfyngiadau ar ei bwerau'n golygu na all argymell anghymhwyso.
35. Bydd y tribiwnlys yn asesu difrifoldeb gan gyfeirio'n benodol at:
- natur a graddau'r tor-amod, a nifer yr achosion o dorri'r Cod;
  - beusrwydd yr aelod, ei fwriadau wrth dorri'r Cod, ac unrhyw achosion blaenorol o dorri'r Cod;

- gwir ganlyniadau a chanlyniadau posibl y tor-amod – i unrhyw unigolyn/unigolion, y cyhoedd yn ehangach a/neu'r cyngor yn ei gyfanrwydd;
- i ba raddau y mae gweithredoedd yr aelod wedi dwyn anfri ar ei swydd neu'r awdurdod perthnasol, neu faint o botensial sydd yna iddynt wneud hynny.

36. Dyma enghreifftiau o'r ffordd y gallai tribiwnlysoedd gymharu difrifoldeb:

- mae tor-amod sy'n cynnwys twyll bwriadol er mwyn cael budd personol neu er mwyn gwahaniaethu yn debygol o gael ei ystyried yn fwy difrifol na thor-amod sy'n cynnwys defnydd diofal o gyfeiriad ebost cyngor ar broffil personol yn y cyfryngau cymdeithasol;
- bydd tor-amod sy'n cynnwys aflonyddu systematig, neu fwlio aelod iau, yn debygol o gael ei ystyried yn fwy difrifol nag achosion o iaith amharchus yn ystod dadl yn y cyngor;
- mae torri cyfrinachedd sy'n arwain at ddatgelu cyfeiriad plentyn sy'n derbyn gofal yn debygol o gael ei ystyried yn fwy difrifol na datgelu cyngor cyfrinachol swyddog cynllunio;
- mae tor-amod sy'n arwain at effaith negyddol sylweddol ar enw da'r swydd neu'r awdurdod yn debygol o gael ei ystyried yn fwy difrifol nag ebost wedi'i eirio'n amhriodol at aelod o'r cyhoedd.

37. Mae achosion o dorri'r Cod sy'n cynnwys llwyr anwybyddu cyngor awdurdodol penodol a roddir ynglŷn â dull o ymddwyn a/neu'r Cod (yn enwedig gan swyddog monitro'r awdurdod perthnasol), camddefnyddio gwybodaeth gyfrinachol, freintiedig neu sensitif yn fwriadol, er budd personol neu er budd cyfaill personol agos, camymddwyn rhywiol, ymddygiad troseddol, gwahaniaethol, trachwantus, a bwlio a/neu aflonyddu i gyd yn debygol o gael eu hystyried yn achosion difrifol iawn o dorri'r Cod.

38. Bydd aelod sydd wedi cael cyfnod o garchar am dri mis neu ragor heb yr opsiwn o dalu dirwy yn ystod y pum mlynedd cyn iddo gael ei ethol neu ar ôl iddo gael ei ethol yn cael ei anghymhwyso'n awtomatig<sup>12</sup>.

### **Dewis y gosb bosibl**

39. Ar ôl asesu difrifoldeb cymharol yr achos o dorri'r Cod, bydd y tribiwnlys yn ystyried pa un o'r camau gweithredu sydd ar gael iddo yw'r un mwyaf priodol<sup>13</sup>. Yn unol ag egwyddorion tegwch a chymesuredd, dylai'r tribiwnlys ddechrau ystyried y gosb bosibl drwy edrych ar y gosb sy'n cael yr effaith leiaf.

### **Peidio â chymryd camau pellach**

39.1 Er bod aelod wedi torri'r Cod Ymddygiad, gallai tribiwnlys benderfynu nad oes angen cosb. Gallai tribiwnlys benderfynu peidio â chymryd camau pellach mewn amgylchiadau fel y rhai osod:

<sup>12</sup> Adran 80(1)(d), Deddf Llywodraeth Leol 1972

<sup>13</sup> Adran 79, Deddf Llywodraeth Leol 2000

- methiant i ddilyn y Cod oherwydd esgeulustod;
- un digwyddiad yn unig, lle mae'r posibilrwydd o niwed o ganlyniad iddo yn fach iawn;
- yr unigolyn yn derbyn bod y posibilrwydd o beidio â chydymffurfio â'r Cod yn y dyfodol yn annhebygol, ac nad oes rhesymau ehangach dros gosb i sicrhau nad yw hynny'n digwydd;
- amgylchiadau personol penodol, gan gynnwys ymddiswyddiad neu waeledd, sy'n golygu bod cosb yn ddiangen a/neu yn anghymesur.

39.2 Dylai tribiwnlys sy'n canfod bod rhywun wedi torri'r Cod, ond sy'n penderfynu nad oes angen rhoi cosb, ystyried a oes angen rhoi rhybudd i'r aelod ynglŷn â'i ymddygiad a/neu ofyn am sicrwydd ynglŷn â'i ymddygiad yn y dyfodol. Mae hon yn ffordd effeithiol o wneud cofnod o ymddygiad yr aelod, sy'n cael ei adlewyrchu ym mhenderfyniad ysgrifenedig y tribiwnlys, fel bod modd ystyried y rhybudd a/neu'r sicrwydd pe canfyddid yn y dyfodol bod yr un aelod wedi torri'r Cod eto. Gellir dwyn methiant i gydymffurfio ag unrhyw sicrwydd a roddwyd i'r tribiwnlys i sylw'r tribiwnlys mewn gwrandawiaidau yn y dyfodol.

### **Atal dros dro am hyd at 12 mis**

39.3 Gallai tribiwnlys achos atal yr aelod o'r awdurdod(au) y mae wedi torri ei God /eu Cod dros dro am hyd at 12 mis.

39.4 Mae atal dros dro yn briodol pan fydd difrifoldeb y tor-amod yn golygu bod ymateb disgyblaethol â therfyn amser yn briodol er mwyn atal gweithredu o'r fath yn y dyfodol, tynnu'r aelod o'r awdurdod/rôl o fewn yr awdurdod dros dro, diogelu'r safonau a bennwyd gan y Cod a sicrhau'r cyhoedd bod y safonau'n cael eu cynnal.

39.5 Nid yw atal dros dro am lai na mis yn debygol o gyflawni amcanion y system gosbau a gallai danseilio amcanion cyffredinol y system. Atgoffir tribiwnlysoedd hefyd mai'r gosb fwyaf sydd ar gael i Bwyllgorau Safonau lleol yw atal dros dro am 6 mis. Dylent gadw hyn mewn cof wrth ystyried achos sydd wedi'i gyfeirio gan yr Ombwdsmon at y Panel Dyfarnu, yn hytrach na'r Pwyllgor Safonau lleol, ac wrth ystyried apêl yn erbyn cosb gan Bwyllgor Safonau lleol. Mae'n bosibl i dribiwnlys apêl argymhell cynyddu'r gosb a roddwyd yn wreiddiol gan y Pwyllgor Safonau.

39.6 Gallai tribiwnlys benderfynu bod atal dros dro yn briodol mewn amgylchiadau fel y rhai isod:

- pan fydd gweithred yr aelod wedi dwyn anfri ar swydd neu awdurdod yr aelod ond na chanfuwyd ei fod wedi gweithredu'n groes i unrhyw baragraff arall yn y Cod (er hyn, bydd y gosb fwyaf priodol yn dibynnu ar ffeithiau penodol pob achos);



- pan fydd y tor-amod yn galw am ymateb disgyblaethol ond, o ystyried amgylchiadau'r achos, ei bod yn annhebygol iawn y bydd achos arall o dorri'r Cod;
- pan fydd yr aelod wedi cydnabod ei fod ar fai, dangos ei fod yn deall beth oedd o'i le â'i ymddygiad, ac ymddiheuro i'r rhai gafodd eu heffeithio.

### ***Atal Dros Dro yn Rhannol am hyd at 12 mis***

- 39.7 Gall y tribiwnlys atal aelod dros dro yn rhannol, hynny yw, bydd yr aelod yn cael ei atal rhag cyflawni swyddogaeth neu rôl benodol (er enghraifft bod yn aelod o bwllgor neu is-bwllgor penodol neu ddal swydd benodol) am hyd at 12 mis.
- 39.8 Mae atal dros dro yn rhannol yn briodol os yw'r tor-amod yn ddigon difrifol i gyfiawnhau atal dros dro (gweler uchod) ond bod amgylchiadau'r achos yn golygu bod yr aelod yn cael dal i gyflawni ei swydd gyhoeddus ac eithrio'r rôl/swyddogaeth/gweithgaredd sy'n cael ei gyfyngu'n benodol gan yr ataliad dros dro.
- 39.9 Mewn achos o atal dros dro yn rhannol, bydd angen i'r tribiwnlys benderfynu o ba rôl/swyddogaeth/gweithgaredd y bydd yr aelod yn cael ei atal, ac os yw'r unigolyn yn aelod o fwy nag un awdurdod, pa effaith y bydd atal dros dro yn rhannol yn ei gael ym mhob awdurdod perthnasol.
- 39.10 Gallai atal dros dro yn rhannol fod yn briodol mewn amgylchiadau fel y rhai isod:
- mae'r aelod yn gallu cydymffurfio â'r Cod at ei gilydd, ond mae'n cael anhawster i ddeall neu dderbyn y ffordd y mae'r Cod yn cyfyngu ar ei ymddygiad mewn agwedd benodol ar weithgaredd y cyngor/awdurdod;
  - mae'r camymddwyn yn uniongyrchol berthnasol i swyddogaeth benodol neu faes penodol y mae'r aelod yn gyfrifol amdano ac yn anghyson â'r swyddogaeth neu'r maes hwnnw;
  - dylai'r aelod gael ei symud dros dro neu ei atal rhag cyflawni swyddogaethau gweithredol i'r corff y mae'r Cod yn berthnasol iddo.

### ***Anghymhwysu am uchafswm o 5 mlynedd***

- 39.11 Gall tribiwnlys achos anghymhwysu'r aelod rhag bod yn aelod, neu ddod yn aelod yn y dyfodol, o'r awdurdod dan sylw neu unrhyw awdurdod perthnasol arall y mae'r Cod Ymddygiad yn berthnasol iddo am uchafswm o 5 mlynedd.
- 39.12 Anghymhwysu yw'r gosb fwyaf difrifol sydd ar gael i dribiwnlys. Mae'n debygol o fod yn briodol os yw'r tor-amod mor ddifrifol fel bod ymateb disgyblaethol sylweddol yn briodol er mwyn sicrhau nad yw'r un peth yn digwydd eto, dangos yn glir bod ymddygiad o'r fath mewn swydd gyhoeddus yn annerbyniol, pwysleisio pwysigrwydd y Cod a chadw hyder

y cyhoedd mewn democratiaeth leol. Nid yw anghymhwys am lai na 12 mis yn debygol o gyflawni llawer (ac eithrio mewn amgylchiadau lle mae cyfnod yr aelod yn y swydd yn mynd i ddod i ben yn ystod y cyfnod hwnnw neu os nad yw'n aelod bellach).

39.13 Gallai tribiwnlys benderfynu bod anghymhwyso'n briodol mewn amgylchiadau fel y rhai isod:

- ceisio budd personol yn fwriadol (iddo ef/iddi hi ei hun, aelod o'r teulu neu gyfaill personol) drwy gamddefnyddio aelodaeth o'r awdurdod a/neu adnoddau'r awdurdod;
- ceisio rhoi rhywun arall dan anfantais yn fwriadol drwy gamddefnyddio aelodaeth o'r awdurdod a/neu adnoddau'r awdurdod;
- diystyru neu beidio â chydymffurfio â darpariaethau'r Cod yn fwriadol a dal i fynnu bod ganddo hawl i wneud hynny;
- peidio â chydymffurfio â darpariaethau'r Cod dro ar ôl tro a dangos tebygolrwydd y bydd patrwm yr ymddygiad yn parhau;
- ceisio budd gwleidyddol yn fwriadol drwy gamddefnyddio adnoddau neu bŵer cyhoeddus yn yr awdurdod;
- ail achos o dor-amod, neu achos dilynol o dor-amod, er gwaethaf rhybudd a/neu er ei fod wedi rhoi sicrwydd ynglŷn â'i ymddygiad yn y dyfodol mewn achos blaenorol gerbron un o dribiwnlysoedd Panel Dyfarnu Cymru;
- ymddygiad sy'n codi amheuaeth ynghylch addasrwydd yr Ymatebydd ar gyfer swydd gyhoeddus;
- dwyn anfri difrifol ar yr awdurdod perthnasol.

### **Amgylchiadau lliniarol a gwaethgol**

40. Bydd y tribiwnlys yn mynd ymlaen i ystyried sut y gallai amgylchiadau penodol yr aelod liniaru a/neu waethygu lefel y gosb sy'n cael ei hystyried. Cynlluniwyd y cam hwn er mwyn ystyried unrhyw amgylchiadau personol sy'n effeithio ar ymddygiad yr aelod, gan gynnwys diffyg profiad, galluedd, dealltwriaeth, cyfrifoldeb (am y tor-amod), edifeirwch, gwneud iawn ac unrhyw ganfyddiadau blaenorol. Mae'r broses hon yn debygol o gael effaith sylweddol ar hyd y gosb, gan gynyddu neu leihau'r cyfnod yn unol â'r ffactorau lliniarol neu waethgol. Gallai ffactorau o'r fath fod yn ddigon ambell waith i berswadio tribiwnlys y gallai atal dros dro (os oes angen) fod yn fwy priodol nag anghymhwys, neu fel arall.

41. Rydym yn annog tribiwnlysoedd i ddilyn y ffyrdd isod o weithio. Er hynny, rydym yn eu hatgoffa mai enghreifftiau yn unig sydd yma. Os yw ffactor lliniarol/gwaethgol yn ymwneud yn uniongyrchol â natur neu ddifrifoldeb y tor-amod, a bod y tribiwnlys eisoes wedi ystyried y ffactor hwnnw wrth ddewis y gosb briodol, dylid ystyried yn ofalus i ba raddau y dylid cynnwys y ffactor hwnnw wrth liniaru/gwaethygu. Er enghraifft:

- os atal dros dro yw'r gosb sy'n cael ei hystyried, oherwydd bod yr ymddygiad yn cael ei ystyried yn ddigwyddiad 'untro', ni ddylai'r ffactor hwn gael ei ystyried fel ffactor lliniarol hefyd oni bai fod natur 'untro' y tor-amod mor eithriadol fel na ddylai gael effaith uniongyrchol ar hyd yr ataliad dros dro;
- os yw'r tor-amod yn cael ei ystyried yn un difrifol oherwydd ei fod yn 'dwyn anfri ar yr awdurdod', ni ddylai'r ffactor hwn gael ei ystyried fel ffactor gwaethgol oni bai fod yr anfri mor eithriadol nes ei fod yn cael effaith uniongyrchol ar hyd yr anghymhwysiad.

42. Dylai tribiwnlysoedd hefyd sicrhau eu bod yn parchu hawl gyfreithlon aelod i apelio ac i wahaniaethu datganiadau neu honiadau a wnaethpwyd wrth ymarfer yr hawl honno oddi wrth y gweithredoedd hynny y gellid eu hystyried fel ffactorau gwaethgol a gynlluniwyd er mwyn rhwystro prosesau'r Ombwdsmon neu'r Panel Dyfarnu.

### ***Amgylchiadau lliniarol***

- tystiolaeth wedi'i chadarnhau fod y camymddwyn wedi'i effeithio gan amgylchiadau personol, gan gynnwys iechyd a straen;
- cyfnod byr o wasanaeth neu ddiffyg profiad mewn rôl benodol;
- hanes blaenorol o wasanaeth da (yn enwedig os yw dros gyfnod maith);
- unwaith yn unig y digwyddodd y camymddwyn;
- er bod yr aelod wedi torri'r Cod, nid oedd yn bwriadu unrhyw falais;
- digwyddodd y camymddwyn oherwydd bod yr aelod wedi cael ei bryfocio neu ei ddylanwadu gan rywun arall;
- roedd y tor-amod yn deillio o gred ddidwyll, ond anghywir er hynny, nad oedd y camymddwyn dan sylw'n gyfystyr â methiant i ddilyn y Cod, yn enwedig ar ôl derbyn cyngor priodol;
- roedd y camymddwyn, er ei fod yn torri'r Cod, yn arwain at ryw faint o fanteision a oedd o fudd i'r cyhoedd;
- mynegiant gwleidyddol o farn ddidwyll, er ei bod wedi cael ei mynegi'n ormodol, neu ddadl wleidyddol (gweler paragraffau 27-30 uchod a Ffactor gwaethgol xii below);
- yr aelod ei hun yn rhoi gwybod am y tor-amod;
- cydnabod ac edifarhau'r camymddwyn ac unrhyw ganlyniadau;
- ymddiheuriad, yn enwedig ymddiheuriad cynnar, i unrhyw un a gafodd ei effeithio;
- cydweithredu mewn ymdrechion i gywiro effaith y methiant;
- cydweithredu â'r swyddog ymchwilio a'r pwyllgor safonau/PDC;

- xv. derbyn bod angen newid ymddygiad yn y dyfodol;
- xvi. parodrwydd i fynychu hyfforddiant pellach;
- xvii. ymrwymiad i ofyn am gyngor priodol ynghylch y Cod yn y dyfodol;
- xviii. yn cydymffurfio â'r Cod ers y digwyddiadau a arweiniodd at y dyfarniad.

### ***Ffactorau gwaethygol***

- i. profiad maith, safle uchel a/neu swydd gyfrifol;
- ii. yr aelod yn ceisio beio pobl eraill yn annheg am ei weithredoedd ei hun;
- iii. ymddygiad bwriadol er mwyn cael budd personol, neu a arweiniodd at fudd personol (iddo ef/iddi hi ei hun, aelod o'r teulu neu gyfaill personol agos) neu anfantais i rywun arall;
- iv. mynd ati'n fwriadol i gamddefnyddio swydd gyhoeddus a/neu adnoddau cyhoeddus er budd personol (iddo ef/iddi hi ei hun, aelod o'r teulu neu gyfaill personol agos) neu er budd gwleidyddol;
- v. camddefnyddio neu fanteisio ar safle o ymddiriedaeth;
- vi. torri'r Cod dro ar ôl tro a/neu nifer o achosion o dorri'r Cod, gan gynnwys parhau â phatrwm ymddygiad sy'n golygu bod yr unigolyn yn peidio â chydymffurfio â'r Cod dro ar ôl tro;
- vii. anonestrwydd a/neu dwyll, yn enwedig yn ystod ymchwiliad yr Ombwdsmon;
- viii. diffyg dealltwriaeth neu wrthod derbyn y camymddwyn ac unrhyw ganlyniadau;
- ix. gwrthod a/neu fethu â mynychu hyfforddiant sydd ar gael ar y Cod;
- x. ymddygiad bwriadol neu ddiotal heb boeni llawer, os o gwbl, am y Cod;
- xi. anwybyddu cyngor, hyfforddiant a/neu rybuddion ynglŷn ag ymddygiad yn fwriadol neu'n ddiotal;
- xii. mynegi barnau nad ydynt yn haeddu cael eu parchu mewn cymdeithas ddemocrataidd, sy'n anghydnaws ag urddas dynol ac sy'n gwrthdaro â hawliau sylfaenol pobl eraill (gweler paragraffau 27 – 30 uchod);
- xiii. rhwystro a/neu beidio â chydymffurfio â phrosesau unrhyw ymchwiliad gan yr Ombwdsmon, Pwyllgor Safonau a/neu Banel Dyfarnu Cymru;
- xiv. gwrthod derbyn y ffeithiau er gwaethaf tystiolaeth glir i'r gwrthwyneb;
- xv. gweithred/gweithredoedd sydd wedi dwyn anfri ar yr awdurdod perthnasol a/neu'r gwasanaeth cyhoeddus;
- xvi. peidio â rhoi sylw i gyngor a/neu rybuddion blaenorol a chadw at unrhyw sicrwydd blaenorol a roddwyd ynglŷn ag ymddygiad sy'n berthnasol i'r Cod.

- xvii. canfyddiadau blaenorol o beidio â dilyn darpariaethau'r Cod.
- xviii. parhau i wadu'r ffeithiau, er gwaethaf tystiolaeth glir i'r gwrthwyneb.

### **Cyflawni diben y drefn gosbau**

43. Efallai y bydd angen i'r tribiwnlys ystyried rhagor o addasiadau i'r gosb a ddewiswyd neu i hyd cosb er mwyn sicrhau effaith ataliol briodol, i'r unigolyn a/neu aelodaeth ehangach y cyngor, neu er mwyn cadw hyder y cyhoedd. Bydd angen i dribiwnlysoedd hefyd ystyried ffactorau allanol a allai gynyddu neu leihau effaith y gosb a ddewiswyd.

### **Budd y cyhoedd**

44. Prif ddiben y drefn gosbau yw cynnal safonau ymddygiad mewn bywyd cyhoeddus a chadw hyder mewn democratiaeth leol. Dylai tribiwnlysoedd adolygu'r gosb a ddewiswyd ganddynt drwy ei chymharu â phenderfyniadau blaenorol Panel Dyfarnu Cymru ac ystyried gwerth y gosb a ddewiswyd o ran effaith ataliol ar gynghorwyr yn gyffredinol a'i heffaith o ran hygredd ymhlith y cyhoedd yn ehangach. Os yw'r ffeithiau a arweiniodd at dorri'r cod yn golygu bod yr aelod yn gwbl anaddas ar gyfer swydd gyhoeddus, yna mae'n debyg mai anghymhwys, yn hytrach nag atal dros dro, fydd y gosb fwyaf priodol.

### **Cymhwyster ar gyfer swydd gyhoeddus mewn awdurdodau perthnasol eraill**

45. Bydd aelodaeth bresennol Ymatebydd o bob awdurdod y mae Deddf Llywodraeth Leol 2000 yn berthnasol iddo yn cael ei hanghymhwyso'n awtomatig, pa un a yw wedi torri Codau'r awdurdodau eraill ai peidio. Bydd anghymhwysiad hefyd yn atal yr Ymatebydd rhag derbyn swydd gyhoeddus, drwy gael ei ethol neu ei gyfethol, yn unrhyw awdurdod arall y mae'r Ddeddf yn berthnasol iddo nes bydd yr anghymhwysiad wedi dod i ben.
46. Bydd atal dros dro yn rhwystro'r aelod rhag cymryd rhan fel aelod o'r awdurdod y canfuwyd ei fod wedi torri ei God, ond nid o reidrwydd fel aelod o unrhyw awdurdodau eraill y mae'r Ymatebydd/Apelydd yn aelod ohonynt. Os yw ffeithiau achos yn codi amheuaeth ynglŷn ag addasrwydd cyffredinol yr aelod ar gyfer swydd gyhoeddus, gallai anghymhwyso fod yn fwy addas nag atal dros dro.

### **Cyn aelodau**

47. Mewn amgylchiadau lle byddai'r tribiwnlys fel arfer yn rhoi cosb ond nad yw'r Ymatebydd yn aelod mwyach, gallai anghymhwysiad byr fod yn briodol (dim ond mewn tribiwnlysoedd achos y gall hyn ddigwydd). Bydd hyn yn sicrhau nad yw'r Ymatebydd yn gallu dychwelyd i swydd gyhoeddus, er enghraifft drwy gael ei gyfethol, cyn diwedd y cyfnod o atal dros dro a fyddai wedi cael ei ddefnyddio pe na bai wedi ymddiswyddo neu heb gael ei ailethol. Mae cerydd yn dal yn opsiwn ar gyfer tribiwnlysoedd apêl.

### ***Effaith ariannol***

48. Dylai tribiwnlysoedd ystyried effaith ariannol cosb ar aelodau: os yw aelod wedi cael ei atal dros dro neu ei anghymhwyso ni fydd yn derbyn ei gyflog a'i lwfansau. Mae'r effaith ariannol yn amrywio o ad-daliad treuliau blynyddol ar gyfer cynghorwyr cymuned i gyflog sylfaenol a threuliau ar gyfer cynghorwyr sir i'r cyflogau uwch a delir i arweinwyr cynghorau mawr<sup>14</sup>.

### ***Yr effaith ar yr etholwyr***

49. Mae'r Uchel Lys wedi cydnabod bod y Senedd wedi rhoi pŵer penodol i dribiwnlysoedd achos sy'n eu galluogi i ymyrryd ag ewyllys yr etholwyr ac y gallai 'ymyriad' o'r fath fod yn angenrheidiol er mwyn cadw ymddiriedaeth a hyder y cyhoedd yn y broses ddemocrataidd leol. Dylai tribiwnlysoedd fod yn hyderus o'u hawl i anghymhwyso aelodau y mae eu hymddygiad wedi dangos nad ydynt yn gymwys i gyflawni'r cyfrifoldebau a roddwyd iddynt gan yr etholwyr.

50. Pan fydd aelod yn cael ei atal dros dro mae'r etholwyr yn cael eu hamddifadu dros dro o gynrychiolaeth leol, tra mae anghymhwyso yn cychwyn proses, naill ai is-etholiad neu gyfetholiad, i benodi rhywun yn lle'r aelod sydd wedi'i anghymhwyso.

### ***Amseriad etholiadau lleol***

51. Yn gyffredinol, dylai hyd anghymhwysiad fod yn gysylltiedig â natur y tor-amod ac amgylchiadau'r achos, a dylai gael ei weithredu hyd yn oed os bydd etholiadau lleol yn cael eu cynnal yn fuan. Ar adegau eithriadol gallai hyd yr anghymhwysiad gael effaith anghymesur iawn ar yr aelod. Er enghraifft: byddai amghymhwysiad o 18 mis, a fyddai'n cael ei orfodi yn Rhagfyr 2020, yn atal aelod rhag sefyll mewn etholiad llywodraeth leol tan fis Mai 2027, gan y byddai cyfnod yr anghymhwysiad yn para am fis arall ar ôl etholiadau Mai 2022. Dylai tribiwnlysoedd fod yn barod i wrando ar gyflwyniadau ynglŷn â pham y dylid amrywio hyd anghymhwysiad, gan gadw egwyddor gyffredinol budd y cyhoedd mewn cof.

### ***Anghymwysïadau awtomatig***

52. Yn unol â'r gyfraith bydd unrhyw aelod sy'n cael dedfryd o garchar am dri mis neu ragor (pa un a yw'n ddedfryd ohriedig ai peidio) yn cael ei anghymhwyso'n awtomatig am bum mlynedd. Nid yw'r ffaith fod Llys wedi rhoi cosb lai yn golygu bod anghymhwysiad am bum mlynedd yn amhriodol. Os yw'r tribiwnlys achos o'r farn nad yw'r aelod dan sylw'n addas i ddal swydd gyhoeddus ac nad yw'n debygol o fod yn addas yn ystod y pum mlynedd nesaf, yna gallai anghymhwysiad o'r fath fod yn briodol.

### ***Cadarnhau'r gosb***

53. Dylai tribiwnlysoedd gadarnhau eu penderfyniad terfynol ynglŷn â chosb, gan hysbysu'r gwrandawriad a'i gofnodi yn hysbysiad y penderfyniad. Bydd

<sup>14</sup> <https://llyw.cymru/irpws/sub/home/?skip=1&lang=cy>

tribiwnlysoedd yn gwneud yn siŵr bod y rhesymau dros eu penderfyniad, gan gynnwys unrhyw ffactorau lliniarol a gwaethybol sylweddol, yn cael eu cynnwys yn y cofnod ysgrifenedig llawn o'r trafodion er mwyn sicrhau bod y partïon a'r cyhoedd yn gallu deall ei gasgliadau ynglŷn â'r gosb.

### Argymhellion

54. Mae gan dribiwnlysoedd achos hefyd bŵer i wneud argymhellion<sup>15</sup> i'r awdurdod perthnasol y mae wedi ystyried ei God ynglŷn ag unrhyw faterion yn ymwneud ag:

- ymarfer swyddogaethau'r awdurdod;
- Cod Ymddygiad yr awdurdod;
- Pwyllgor Safonau'r awdurdod.

55. Mae gan yr awdurdod y gwneir yr argymhellion iddo ddyletswydd i'w hystyried cyn pen tri mis, yna paratoi adroddiad i'r Ombwdsmon yn amlinellu'r camau gweithredu y mae ef, neu ei Bwyllgor Safonau, wedi eu cymryd neu am eu cymryd. Os nad yw'r Ombwdsmon yn fodlon â'r camau a gymerwyd neu y bwriedir eu cymryd, mae ganddo bŵer i ofyn i'r awdurdod gyhoeddi datganiad yn rhoi manylion am yr argymhellion a wnaethpwyd gan y tribiwnlys achos a rhesymau'r awdurdod dros beidio â'u gweithredu'n llawn. O ganlyniad, cynghorir tribiwnlysoedd i ystyried eu defnydd o'r pŵer hwn yn ofalus.

### Tribiwnlysoedd achos interim – pennu cosb

56. Bydd tribiwnlysoedd achos interim yn penderfynu, ar ôl ystyried adroddiad (gan gynnwys unrhyw argymhelliad) gan yr Ombwdsmon ar ymchwiliad sy'n cael ei gynnal i achos honedig o gamymddwyn, a yw am atal yr aelod neu'r aelod cyfetholedig dros dro, o'r awdurdod neu o rôl o fewn yr awdurdod, neu ei atal dros dro yn rhannol.

57. Yn wahanol i dribiwnlysoedd achos a thribiwnlysoedd apêl, nid yw tribiwnlysoedd achos interim yn ddisgyblaethol. Nod tribiwnlysoedd achos interim yw:

- hwyluso ymchwiliad effeithiol a chyflym gan yr Ombwdsmon i ymddygiad yr ymatebydd;
- lleihau unrhyw amhariad ar fusnes yr awdurdod dan sylw yn ystod yr ymchwiliad;
- cadw enw da'r awdurdod dan sylw;
- diogelu'r awdurdod dan sylw rhag her gyfreithiol.

58. Y pwerau sydd ar gael i dribiwnlys achos interim<sup>16</sup> yw atal yr Ymatebydd dros dro, yn gyfan gwbl neu'n rhannol, rhag bod yn aelod neu'n aelod cyfetholedig o'r awdurdod dan sylw, am ddim mwy na chwe mis (neu, os yw'n fyrrach, am weddill cyfnod yr aelod yn ei swydd). Yn achos atal dros dro yn rhannol, bydd

<sup>15</sup> Adran 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

<sup>16</sup> Adran 78(1), Deddf Llywodraeth Leol 2000

angen i'r tribiwnlys achos interim benderfynu o ba weithgaredd y mae'r ymatebydd i gael ei atal dros dro.

### **Diben a phroses**

59. Mae tribiwnlysoedd achos interim yn cydnabod nad oes canfyddiad pendant wedi'i wneud eto ynglŷn â dilysrwydd yr honiadau ynglŷn â'r Ymatebydd ac y gall unrhyw fath o atal dros dro gael effaith sylweddol ar rôl, hygredded a materion ariannol aelod.
60. O ganlyniad, bydd tribiwnlysoedd achos interim yn ceisio cymryd y camau lleiaf posibl er mwyn sicrhau bod yr ymchwiliad yn cael ei gwblhau'n effeithiol, bod yr awdurdod dan sylw'n gweithredu'n briodol ac nad yw'r cyhoedd yn colli eu ffydd yn yr awdurdod. Ni fydd y tribiwnlys yn penderfynu atal aelod yn llawn oni bai y byddai'n methu â chyflawni ei amcanion fel arall.

### **Natur yr honiad(au)**

61. Bydd tribiwnlysoedd achos interim yn dechrau drwy ystyried natur yr honiadau yn erbyn yr Ymatebydd er mwyn penderfynu, os bydd yr honiad yn cael ei gadarnhau, a fyddai atal dros dro neu atal dros dro yn rhannol yn gosb briodol.

### **Peidio â chymryd camau pellach**

62. Os bydd y tribiwnlys yn dod i'r casgliad na fyddai canfyddiad o dor-amod yn arwain at atal dros dro neu atal dros dro yn rhannol, mae'n annhebygol iawn o wneud gorchymyn o'r fath heb roi rhesymau da pam na all ymchwiliad yr Ombwdsmon fynd yn ei flaen yn effeithiol heb gamau o'r fath.
63. Os bydd y tribiwnlys yn dod i'r casgliad y byddai canfyddiad o dor-amod yn arwain at atal dros dro neu atal dros dro yn rhannol, bydd angen iddo gael dadl gref o hyd bod atal yr Ymatebydd dros dro neu ei atal dros dro yn rhannol o fudd i'r cyhoedd cyn i'r Ombwdsmon gwblhau ei ymchwiliad a chyfeirio adroddiad terfynol i Banel Dyfarnu Cymru.

### **Atal Dros Dro yn Rhannol**

64. Mae atal dros dro yn rhannol yn cynnig y posibilrwydd o ddiogelu hyder y cyhoedd mewn awdurdod a'i alluogi i weithredu'n effeithiol heb amddifadu'r etholwyr o gynrychiolaeth i'w ward. Efallai y bydd tribiwnlysoedd achos interim yn dymuno dilyn yr egwyddorion sy'n berthnasol i ddull gweithredu tribiwnlysoedd achos a thribiwnlysoedd apêl mewn cysylltiad ag atal dros dro yn rhannol.
65. Gallai atal dros dro yn rhannol fod yn briodol mewn amgylchiadau lle mae'r honiadau'n uniongyrchol berthnasol i swyddogaeth neu faes cyfrifoldeb penodol ac yn anghyson â'r swyddogaeth a'r maes cyfrifoldeb, neu os yw'r Ymatebydd yn ymarfer swyddogaethau gweithredol ar ran yr awdurdod yr honnir ei fod ef neu hi wedi torri ei God, neu gellid gwahardd yr Ymatebydd o'i gyfrifoldebau penodol neu weithredol er mwyn tawelu ofnau'r cyhoedd heb



danseilio gallu'r awdurdod i weithredu'n effeithiol nac amddifadu'r etholwyr o gynrychiolaeth i'w rhanbarth/ward.

### **Atal dros dro**

66. Mae atal dros dro yn debygol o fod yn briodol os oes pryder dilys ynglŷn ag unrhyw un o'r canlynol:

- gallai'r Ymatebydd ymyrryd â thystiolaeth neu â thystion sy'n berthnasol i'r mater sy'n cael ei ymchwilio;
- ni allai'r awdurdod dan sylw weithredu'n effeithiol pe bai'r Ymatebydd yn parhau yn ei swydd tra bo'r honiad yn ei erbyn ef neu hi yn dal heb ei ddatrys – bydd y tribiwnlys yn rhoi sylw arbennig i unrhyw fethiant neu fethiant posibl yn y berthynas rhwng yr Ymatebydd, aelodau eraill a/neu staff allweddol yr awdurdod;
- mae'r honiadau'n codi materion difrifol iawn, a phe bai'r Ymatebydd yn parhau yn ei swydd tra bo'r honiadau'n dal heb eu datrys byddai hyder y cyhoedd yn yr awdurdod yn cael ei roi yn y fantol.

## **Atodiad: dogfennau a chanllawiau eraill sy'n berthnasol i dribiwnlysoedd**

Panel Dyfarnu Cymru : Llawlyfr Aelodau (2017)

Ombwdsmon Gwasanaethau Cyhoeddus Cymru – Y Cod Ymddygiad ar gyfer aelodau cynghorau sir a chynghorau bwrdeistref sirol, awdurdodau tân ac achub, ac awdurdodau parciau cenedlaethol: Canllawiau (Awst 2016) a'r Cod Ymddygiad ar gyfer aelodau cynghorau cymuned: Canllawiau (Awst 2016)

Equal Treatment Bench Book, Y Coleg Barnwrol (fel y'i diwygiwyd)

Rheoliadau Dyfarniadau gan Dribiwnlysoedd Achos a Thribiwnlysoedd Achos Interim (Cymru) 2001 Rhif 2288 (Cy.176), fel y'u diwygiwyd gan Reoliadau Awdurdodau Lleol (Tribiwnlysoedd Achos a Thribiwnlysoedd Achos Interim a Phwyllgorau Safonau) (Diwygio) (Cymru) 2009 Rhif 2578 (Cy.209)

Rheoliadau Ymchwiliadau Llywodraeth Leol (Swyddogaethau Swyddogion Monitro a Phwyllgorau Safonau) (Cymru) 2001 Rhif 2281 (Cy.171), fel y'u diwygiwyd gan Reoliadau Llywodraeth Leol (Pwyllgorau Safonau, Ymchwiliadau, Gollyngiadau ac Atgyfeirio) (Cymru) (Diwygio) 2016 Rhif 85 (Cy.39)

31 August 2018

Dear Monitoring Officer

### **Adjudication Panel for Wales – Sanctions Guidance**

As you are aware the Adjudication Panel for Wales (APW) has recently undertaken an exercise to improve and modernise its Sanction Guidance following consultation with Monitoring Officers, the Public Services Ombudsman for Wales and the Welsh Government.

I now enclose a copy of the Sanctions Guidance for you to share with your Standards Committee. The Sanctions Guidance will come into force for cases heard by the APW after 1<sup>st</sup> September 2018.

The APW views the new Sanctions Guidance as a living document, so please do contact us if you have any comments or feedback following its use by your Standards Committee, so that we may consider and make improvements to the guidance.

Please contact me if you have any questions in regard to the new Sanctions Guidance or the APW more generally.

Yours sincerely

Leon Mills  
Registrar to the Panel

*Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.*  
*We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.*

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

31 Awst 2018

Annwyl Swyddog Monitro

### **Panel Dyfarnu Cymru – Canllaw ar Gosbau**

Fel y gwyddoch, aeth Panel Dyfarnu Cymru ati yn ddiweddar i wella a moderneiddio ei Ganllaw ar Gosbau, yn dilyn ymgynghoriad â Swyddogion Monitro, Ombwdsmon Gwasanaethau Cyhoeddus Cymru a Llywodraeth Cymru.

Rwyf nawr yn amgáu copi o'r Canllaw ar Gosbau i chi ei rannu gyda'ch Pwyllgor Safonau. Bydd y Canllaw ar Gosbau yn dod i rym ar gyfer achosion sy'n dod gerbron y Panel ar ôl 1 Medi 2018.

Mae'r Panel yn ystyried y Canllaw ar Gosbau fel dogfen fyw, felly cysylltwch â ni os oes gennych unrhyw sylwadau neu adborth ar ôl i'ch Pwyllgor Safonau ei ddefnyddio, er mwyn i ni ystyried a gwella'r canllawiau.

Cysylltwch â mi os oes gennych unrhyw gwestiynau yn ymwneud â'r Canllaw ar Gosbau newydd neu Banel Dyfarnu Cymru yn gyffredinol.

Yn gywir

Leon Mills  
Cofrestrydd y Panel

*Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.*

*We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.*

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

31 August 2018

Dear Monitoring Officer,

### Adjudication Panel for Wales – Legal Member Recruitment

I write to draw your attention to an imminent Judicial Appointments Commission (“JAC”) exercise to appoint two new legal members to the Adjudication Panel for Wales (“APW”). This exercise is due to launch on 4 October 2018 and applications should be made through the website of the JAC ([www.judicialappointments.gov.uk](http://www.judicialappointments.gov.uk)).

The APW is keen to increase its diversity and welcomes applications from under-represented groups. More information can be seen at the information page for this exercise on the JAC website. I would also remind you that these vacancies are open to solicitors and barristers in England and Wales with at least 5 years’ post qualification experience. Solicitors, barristers and advocates in Scotland and Northern Ireland are also eligible to apply. Local government lawyers are able to be appointed, though they will not be able to sit on cases involving their employer.

I should be obliged if you could circulate to your legally qualified colleagues the message that there are vacancies in the APW should they wish to apply.

Yours sincerely



Claire Sharp  
President of the APW

*Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.*

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Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol



31 Awst 2018

Annwyl Swyddog Monitro

## Panel Dyfarnu Cymru – Recriwtio Aelod Cyfreithiol

Ysgrifennaf atoch i'ch hysbysu bod y Comisiwn Penodiadau Barnwrol yn bwriadu mynd ati cyn hir i benodi dau aelod cyfreithiol newydd i Banel Dyfarnu Cymru. Disgwylir i'r broses ddechrau ar 4 Hydref 2018, ac fe ddylid ymgeisio drwy wefan y Comisiwn ([www.judicialappointments.gov.uk](http://www.judicialappointments.gov.uk)).

Mae Panel Dyfarnu Cymru yn awyddus i sicrhau mwy o amrywiaeth ac yn croesawu ceisiadau o blith grwpiau heb gynrychiolaeth ddigonol. Ceir rhagor o fanylion ar dudalen wybodaeth y broses hon ar wefan y Comisiwn. Hoffwn eich atgoffa hefyd bod y cyfleoedd hyn ar agor i gyfreithwyr a bargyfreithwyr yng Nghymru a Lloegr sydd ag o leiaf 5 mlynedd o brofiad ar ôl cymhwyso. Mae cyfreithwyr, bargyfreithwyr ac adfocadau o'r Alban a Gogledd Iwerddon hefyd yn gymwys i ymgeisio. Mae modd penodi cyfreithwyr llywodraeth leol, ond ni fydd modd iddynt wrando ar achosion yn ymwneud â'u cyflogwyr.

Buaswn yn gwerthfawrogi pe gallech hysbysu'ch cydweithwyr sydd wedi cymhwyso yn y gyfraith bod llefydd gwag ar Banel Dyfarnu Cymru, rhag ofn eu bod yn dymuno ymgeisio.

Yn gywir



Claire Sharp  
Llywydd Panel Dyfarnu Cymru

*Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.*

*We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.*

PDC, Adeiladau Llywodraeth, Heol Spa Ddwyrain,  
Llandrindod, Powys, LD1 5HA

Llinell Gymorth/Helpline: 03000 259805

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Email: [adjudication.panel@gov.wales](mailto:adjudication.panel@gov.wales)

[www.APW.gov.wales](http://www.APW.gov.wales)

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol

## Standards Hearings Workshop – Practical issues - Powys County Council

Standards Conference 14 September

What would you do if...

1. **The Standards Committee has agreed to hold a hearing.** The Standards Officer has written to the Member advising of the date for a hearing and asked him to respond in 14 working days to say if he can attend. **The Member advises he cannot make that date and asks for another. Another date is offered and the Member comes back to say he cannot make this.**
2. **A Hearing date** has now been agreed by the Member and arrangements made. On the day, the **Member fails to attend but makes written representation that he wants another opportunity to attend.**

You are now at the Hearing and the Member is present.

First stage: Preliminary procedural issues

3. **The Member asks to introduce new written documentation.**
4. **The press turn up.**
5. **The Member objects to a Member of the Committee.**
6. **The Member proposes 10 witnesses.**
7. **The Member has a character witness.**
8. **The Member has a legal team.**
9. **Can a legal advisor advise throughout the hearing?**

Second stage: making findings of fact

10. **The Member raises a new issue that is not contained in their written representations.**

Fourth stage: Action to be taken

11. **The press are requesting a statement but the Member has failed to attend the hearing and it has considered the issue in his absence.**

Mae'r dudalen hon wedi'i gadael yn wag yn fwriadol