

ADJUDICATION PANEL FOR WALES

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 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, Monitoring Officers and Welsh Government. 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 member, 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 2000ⁱ. Its primary purpose is to assist the Panel's case, appeal and interim 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 case, appeal and interim tribunals in determining sanction following a finding that the Code has been breached.
3. The purpose of the sanctions regime 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 case, appeal and interim 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 by way of illustration and not exhaustive. Tribunals have ultimate discretion when imposing sanctions and can consider other factors that they consider necessary and appropriate. Nor does the Guidance undermine the responsibility of the legal member of a tribunal to advise on questions of law, including the specific applicability of this Guidance and the approach to be taken by the tribunal.
5. In setting out the factors considered by a tribunal in its determination of an appropriate sanction, the Guidance offers a transparency of approach for the benefit of all parties involved in a tribunal. It aims to ensure that everyone is aware, from the outset, of the way in which the tribunal will 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 Walesⁱⁱ, confirming the expectations on local members in 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 [insert date]. 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 a 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 must, on taking office, sign an undertaking to abide by their authority's Code for the duration of their membership.
9. The Welsh Government has issued a model Code of Conductⁱⁱⁱ in order to ensure broad consistency across Wales and to give certainty to members and the public as to the minimum standards expected. Local Codes must include, as a baseline, the requirements of the national model which builds on the Nolan Committee's Principles for Public Life^{iv} and encompasses ten core principles^v:
 - 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

Expectations on local members

10. Members of local authorities, community councils, fire and rescue authorities and national park authorities in Wales must abide by their authority's Code:
 - whenever they are acting, claiming to act or giving the impression of acting in an official capacity as a member or representative of their authority;
 - at any time, if they are conducting themselves in a manner which could reasonably be regarded as bringing their public 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^{vi}. 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 use of the authority's resources – in addition to those less frequently encountered.
12. Ultimately, members must use their judgment in applying the principles to their own situation. They cannot delegate responsibility for their conduct under the Code.

Allegations of breach

13. Allegations that a member's conduct is in breach of the Code are 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 tribunal.

The Adjudication Panel for Wales

14. The introduction of the ethical framework included the establishment of the Adjudication Panel for Wales^{vii} 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.

Appeal tribunals

16. Appeals tribunals are appointed by the President to consider appeals from members against a decision of a local Standards Committee on misconduct. Appeal tribunals are responsible for reviewing the decision that a local member has breached the Code of Conduct and any sanction imposed. They may dismiss the appeal, overturn the Standards Committee decision on breach or refer the matter back to the Committee with a recommendation as to a different sanction.

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 tribunal is not to be regarded as disciplinary as this would be premature given the ongoing nature of the Ombudsman's investigation.

The sanctions regime

18. The Committee on Standards in Public Life^{viii} which originated the ethical framework identified a mechanism for enforcing and punishing 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:

- 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 tribunal that has found a breach of the Code are^{ix}:

- 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.

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.

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 local 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 value 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^x 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.

Equality and impartiality

26. Fair treatment is a fundamental principle of 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.

Human Rights (Article 10)

27. Tribunals must ensure that their processes and practices respect human rights legislation. This Guidance aims to support those principles. In particular, tribunals must ensure that they consider the relevance of Article 10 of the European Convention on Human Rights in their deliberations.

28. Article 10 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^{xi} 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)?

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 an appropriate sanction, the tribunal's approach should be sufficiently broad 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 and the duration; 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.

35. The tribunal will assess seriousness with particular reference to:

- the nature and extent of the breach, and number of breaches;
- the Respondent/Appellant'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 of any publicity surrounding the breach.

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

- a breach involving deliberate deception for personal gain 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 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 coverage of the council in the national media 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, the deliberate abuse of privileged or sensitive information for personal gain, and sexual misconduct, discriminatory, predatory 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, even if suspended, is automatically subject to disqualification^{xii}.

Choosing the potential sanction

39. Having assessed the relative seriousness of the Respondent/Appellant's breach of the Code, the tribunal will consider which of the three courses of action available to it is most appropriate^{xiii}. In line with the principles of fairness and proportionality, the tribunal should start its considerations of possible sanctions with that of least impact to that of greatest.

No action

39.1 The tribunal may decide that, despite the Respondent/Appellant 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:

- 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 Respondent/Appellant 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 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 Respondent/Appellant as to their conduct and/or seek

assurances as to future behaviour. This provides an effective means of placing the Respondent/Appellant'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 Respondent/Appellant being found to have breached the Code in the future.

Suspension for up to 12 months

- 39.3 A tribunal may suspend the Respondent/Appellant for up to 12 months from the authority(ies) whose Code has 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 future such 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.
- 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.
- 39.6 Circumstances in which a tribunal may decide that a suspension is appropriate may include:
- the Respondent/Appellant'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 (or found to have committed a criminal offence punishable by at least three months imprisonment);
 - 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 Respondent/Appellant 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 Respondent/Appellant from exercising a particular function or role (such as being a member of a particular authority, 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 Respondent/Appellant 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 Respondent/Appellant 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 Respondent/Appellant 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 misconduct arises from the membership of a particular authority and has no bearing on the membership of another;
- the Respondent/Appellant 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 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 Respondent/Appellant might be regarded as unfit for public office 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 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;

- seeking personal gain (for herself/himself or family member or personal associate) by exploiting membership of the authority and/or the authority's resources;
- deliberately seeking political gain by misusing public resources or power within the authority;
- a 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/Appellant'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 Respondent/Appellant may mitigate and/or aggravate the level of sanction under consideration. This stage is designed to take account of any personal circumstances affecting the Respondent/Appellant's conduct including inexperience, capacity, insight, responsibility (for the breach), remorse, reparation and any previous findings. The 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 may be more appropriate than a disqualification, and vice versa.
41. Tribunals are encouraged to work through the examples set out below but 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 Respondent/Appellant'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. the misconduct arose from provocation or manipulation on the part of others;
- vi. 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;
- vii. the misconduct, whilst in breach of the Code, had some beneficial effect for the public interest;
- viii. political expression of an honestly held opinion, albeit intemperately expressed, or a political argument (see Aggravating factor xii below);
- ix. self-reporting the breach;
- x. recognition and regret as to the misconduct and any consequences;
- xi. an apology, especially an early apology, to any affected persons;
- xii. co-operation in efforts to rectify the impact of the failure;
- xiii. co-operation with the investigation officer and the standards committee/APW;
- xiv. acceptance of the need to modify behaviour in the future;
- xv. preparedness to attend further training;
- xvi. commitment to seeking appropriate advice on the Code in the future;
- xvii. compliance with the Code since the events giving rise to the adjudication.

Aggravating factors

- i. length of experience, seniority and/or position of responsibility;
- ii. unfairly blaming others for the Respondent/Appellant's own actions;
- iii. deliberate conduct designed to achieve or resulting in personal (for her/himself, a family member or 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 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 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;
- xiii. obstructing and/or failing to co-operate with the Ombudsman's investigation 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 warnings or assurances given as to conduct relevant to the Code.

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 standard 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 Respondent/Appellant 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 Respondent/Appellant 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 Respondent/Appellant'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/Appellant is no longer a member, a short period of disqualification may be appropriate. This will ensure that the Respondent/Appellant 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.

Financial impact

48. Tribunals should take into account the financial impact on members of a sanction: during suspension, a member will be denied payment of their basic salary or allowances; following disqualification, the member will lose any entitlement to 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 salaried paid to leaders of larger councils^{xiv}.

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. Tribunals should consider the validity of imposing a disqualification as an alternative to suspension in order to avoid the electorate being left without adequate representation or an authority being inquorate.

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 Respondent/Appellant. For example: a disqualification of 18 months, imposed in December 2020, would prevent a Respondent/Appellant 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. Nor, if the matter does come before a case tribunal, should the view be taken that because a Court has imposed a sentence of 3 months imprisonment or longer that the maximum disqualification should automatically be imposed. The same facts as might give rise to such an outcome from criminal proceedings might not usually attract a five-year disqualification by a case tribunal.

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.

Recommendations

54. Case tribunals also have the power to make recommendations^{xv} 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, it 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 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 tribunals are not disciplinary. Interim 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^{xvi} 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.
60. Interim case tribunals will therefore seek to take the minimum action necessary to ensuring 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:
- 65.1 the Respondent is a member of two (or more) relevant authorities but the allegations are specific to one authority only - the Respondent may be suspended from that authority without impacting on the others;
 - 65.2 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 precluded from their specific or executive responsibilities in order to reassure public confidence whilst not undermining the authority's ability to function effectively or depriving the electorate of their 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 Local Authorities (Case and Interim Case Tribunals and Standards Committees) (Amendment) (Wales) Regulations 2009 2578 (W. 209)

ⁱ 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

ⁱⁱ 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

ⁱⁱⁱ The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

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

^{iv} Nolan Report “Standards of Conduct in Local Government in England, Scotland and Wales

^v 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

^{vi} 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

^{vii} Part III, Local Government Act 2000

^{viii} Reference to the report on enforcement

^{ix} Section 79, Local Government Act 2000

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

^{xi} Wilkie J in the case of Sanders v Kingston No (1) [2005] EWHC 1145

^{xii} Section 80(1)(d), Local Government Act 1972

^{xiii} Section 79, Local Government Act 2000

^{xiv} <http://gov.wales/irpwsb/home/?lang=en>

^{xv} Section 80, <http://www.legislation.gov.uk/ukpga/2000/22/section/80>

^{xvi} Section 78(1), Local Government Act 2000