

CYNGOR SIR POWYS COUNTY COUNCIL

**Standards Community Sub-Committee
17 February 2022**

REPORT BY: Head of Legal and Democratic Services

SUBJECT: Standards Issues

REPORT FOR: Decision, Information and Discussion

A Referral of Councillors to Public Services Ombudsman

A1. Town and Community Councillor Referrals

The current position regarding existing matters with the Ombudsman is as follows:

03/20/TCC Ombudsman deciding whether or not to investigate
09/20/TCC Ombudsman deciding whether or not to investigate
10/20/TCC Ombudsman deciding whether or not to investigate

04/21/TCC Ombudsman investigating
05/21/TCC Ombudsman investigating
11/21/TCC Ombudsman investigating
12/21/TCC Ombudsman investigating

B. Dispensations

B1. Applications - Town and Community Councillors

No applications for dispensation have been received from Town or Community Councillors.

C. Independent Review of the Ethical Standards Framework in Wales and the Standards Conference Wales held on 9 February 2022 - [The Sub-Committee will join the Standards Committee to discuss this topic]

PURPOSE OF REPORT

1.1 To advise Members of the publication of the report into Welsh Government's commissioned independent review of the Ethical Standards Framework in Wales.

2. BACKGROUND

2.1 In March Welsh Government confirmed they would be reviewing the ethical framework and the model Code of Conduct following the coming into force of the Local Government & Elections (Wales) Act 2021.

2.2 The Ethical Standards Framework for Wales was established by Part 3 of the

Local Government Act 2000 to promote and maintain high standards of ethical conduct by members and officers of relevant authorities in Wales. A 'relevant authority' is a county or county borough council ("a principal council"), a community council, a fire and rescue authority and a National Park authority in Wales.

2.3 Key components of the ethical framework include the statutory Members' Code of Conduct, which sets out the duties imposed on all elected and co-opted Members; and the statutory provisions relating to Standards Committees, established to promote and maintain high standards of conduct by the Members and co-opted Members of the authority. The Framework consists of ten general principles of conduct for members (derived from Lord Nolan's 'Seven Principles of Public Life'). These are included in the Conduct of Members (Principles) (Wales) Order 2001. Further, the Local Authorities (Model Code of Conduct) (Wales) Order 2008 ("Model Code of Conduct") provides for a set of enforceable minimum standards for the way in which members should conduct themselves, both in terms of their official capacity and (in some instances) in their personal capacity. It also includes provisions relating to the declaration and registration of interests. The Framework has remained largely unchanged, though there have been a number of small amendments to improve the operation of the Framework over the last twenty years.

3. INDEPENDENT REVIEW OF THE ETHICAL FRAMEWORK IN WALES

3.1 An independent review of the Framework was undertaken by Richard Penn between April and July 2021 to assess whether the Framework remains fit for purpose was open and transparent, and that it commanded the confidence of all involved with the framework. Mr. Penn is a former Chief Executive of two major local authorities in England and was the first NAW Commissioner for Standards from 2000 - 2012. The review took into account the new legislative requirements set out in the Act and the current equality and diversity policy context.

3.2 The terms of reference of the review were to undertake a review of the whole framework to include:

- an audit of the Codes of Conduct adopted by authorities;
- an analysis of the effectiveness of the framework in fostering high standards of conduct in local government and public confidence in those arrangements;
- whether the framework is still fit for purpose;
- the role of Standards Committees; • an analysis of the arrangements and protocols in place to support members and staff; and
- consideration of the current sanctions and whether they are still appropriate.

3.3 The Review involved engagement with partners to establish views about the process and operation of the framework including details where the framework worked well and whether there were areas for improvement. Paragraph 2.14 of the report details the range of stakeholders the Consultant interviewed during the first phase of the review

3.4 The final report was published on 14th October (attached at Appendix B to this report) concludes the current arrangements are fit for purpose but recommends some changes to the Framework, including the Model Code of Conduct. Specific attention should be drawn to the Executive Summary at Page 3 which highlights the main considerations. Members will note that some of the findings are statements, and other are recommendations

3.5 The findings fall into categories based on whether they would need legislation to implement. Some recommendations need primary legislation (e.g. granting the Adjudication Panel for Wales the power to restrict reporting on sensitive cases), others require secondary legislation (such as updating the code of conduct itself) and some are matters of practice that can be implemented if the relevant parties are willing to do so.

3.5 An Executive Summary at Page 3 which highlights the main considerations. A summary of the report's key findings can be found at Appendix 2 to the report.

3.6 An audit of the Codes of Conduct adopted by all the required authorities against the Model Code to identify any local variances revealed that only 1 County Council has adopted the Model Code of Conduct without significant variations or additions. Over a half have adopted a local resolution procedure, and over one half also have a mandatory training requirement.

3.7 The framework generally, and the requirements of the Code of Conduct in particular, has been instrumental in fostering the high standards of conduct that are evident in local government in Wales. There are concerns about the continuing and recently increasing volume of complaints about the conduct of members of Community Councils. Most complaints are about failure to treat someone with respect or bullying and such behaviour is rarely caused by a lack of understanding, nor solved by greater understanding, of the code Richard Penn believes that mandatory training on the Code for all members and the greater use of local resolution procedures should result in a reduction of the number of the low level complaints and thus the need for formal investigations.

3.8 Although Mr Penn concluded that the current framework is fit for purpose and works well in practice, he did propose a number of amendments to the Code

(1) Specify the threshold for declarations of any gift, hospitality, material benefit or advantage to ensure consistency across Wales

(2) There is agreement that the Code should not require Councillors to disclose their home address

(3) Define a 'person' either in the 2000 Local Government Act or in the Code.

(4) Paragraph 4a of the Code (to have due regard to equality of opportunity for all people) should be extended to include all nine protected characteristics under the Equality Act 2010.

(5) The guidance on social media published by the WLGA and the Public Services Ombudsman should be formalised by appropriate amendments to the Code

(6) 6(1)(b) of the Code of Conduct should be amended to make it an obligation of the member to report their own criminal behaviour as well as that of others (as at present)

(7) Make training on the Code of Conduct mandatory for all members of by including a commitment to undertake the necessary training in the Declaration of Acceptance of Office that all elected members are required to sign under The Local Elections (Declaration of Acceptance of Office) (Wales) Order 2004

(8) Increase the use of local resolution of complaints by requiring that any complaint should be considered for local resolution before it can be referred subsequently to the Public Services Ombudsman, in order to speed up the complaints process and ensure that the Ombudsman's resources are devoted

to the investigation of serious complaints.

(9) Extend the Public Services Ombudsman for Wales' power to refer complaints back for local resolution Most proposed changes to the code seem sensible.

3.9 The report proposes changes to the powers and processes of the Adjudication Panel for Wales :

- (1) Restricted reporting orders - to control the reporting by the press about any case.
- (2) Anonymity of witnesses - an express power to order anonymity for witnesses in sensitive cases would be useful for both Case and Appeal Tribunals to ensure that there is legal underpinning.
- (3) Disclosure – to put the recent practice direction on a legal basis xiii. Appeal Tribunal procedure – remove the requirement on Standards Committees to consider the decision of the APW on the Appeal if it is different to the original decision
- (4) Case Tribunal procedure – updates to make the Case Tribunal Procedure more efficient and fairer to witnesses
- (5) Permission to appeal procedure - minor amendments to make the process more “balanced and sensible”
- (6) Sentencing powers – to give the panel the power to impose more varied sanctions as was the case with the former Adjudication Panel for England
- (7) Interim Case Tribunals - the threshold for meeting the legislative requirements for an interim referral is considered to be too high. The proposal is to introduce a test similar to that used by the Regulatory Tribunals such as the Medical Practitioners' Tribunal.

3.10 The Report also considers of the role of Standards Committees, including their role in relation to Town and Community Councils and whether the establishment of sub-committees has had any impact on the process of supporting Community Councils and dealing with complaints. The Report concludes :

- (1) That the Chair of the Standards Committee should play a leadership role, along with the Chief Executive, the Monitoring Officer and the Leaders of political groups in promoting high standards of conduct across the Council.
- (2) There is a need for training of members of Standards Committee, not only on the Model Code of Conduct but also on how to hold Hearings
- (3) There should be an all-Wales Forum for Independent Chairs of Standards Committees and the re-establishment of the annual Conference for Independent Chairs and Independent members of Standards Committees.
- (4) The Public Services Ombudsman for Wales having accepted the need for more reference back to Standards Committees when he declines to investigate complaints, the Standards Committees would need to have additional powers to require necessary training of members and the power to require a member to make an apology to the complainant
- (5) No view was expressed on whether the current sanctions open to Standards Committees are still appropriate

3.11 Welsh Government will now consider the recommendations to amend the Model Code of Conduct in the short term. Any legislative change will be subject to a technical consultation with a planned implementation ahead of next May's Local Elections. Welsh Government say action to address other recommendations in the report will be taken forward in partnership with key stakeholders in the medium to

longer term.

D. Meeting Dates

To note the 2022 meeting dates:

9 September 0930hrs – Code of Conduct training and induction

15 September 1400hrs

5 December 1400hrs

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